

The Solicitors' Journal

VOL. LXXXI.

Saturday, January 23, 1937.

No. 4

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Current Topics.

Annual Meeting of the Bar.

THE annual general meeting of the Bar took place in the Inner Temple Hall last Monday. On p. 82 of the present issue appears a report of the proceedings, to which, therefore, it will be unnecessary to make extended reference here. It may, however, be shortly stated that the Attorney-General paid a tribute to his predecessor, Sir THOMAS INSKIP, whose term of office as a law officer for ten years was, he recalled, so far as the researches of the Law Officers' Department went, exceeded by that of only two other law officers—JOHN VAMPAGE, who was Attorney-General to HENRY VI, and JAMES HUBBARD, Attorney-General to HENRY VII. Reference was made to the heavy losses which the Council had suffered by the deaths of LORD DARLING, LORD TREVETHIN and LORD HANWORTH, and by that of Sir PERCIVAL CLARKE. Sir DONALD SOMERVILLE said that he sometimes heard persons criticising the Bar Council, but the Council was the representative institution of the profession, and it was what the profession made it. He referred to the gratitude which he believed to be due from the profession generally and expressed his desire personally to pay a tribute to the members of the Council for the businesslike and satisfactory way in which the many problems which came before them were dealt with. In moving the adoption of the annual statement Sir HERBERT CUNLIFFE, K.C., said that experience had testified to the desire on the part of all members of the Bar to maintain a high degree of probity and integrity. The motion aforesaid was carried.

Police Appeals in Motoring Cases.

ATTENTION may be drawn to certain observations recently made by members of a Divisional Court which discharged a rule nisi obtained by the Chief Constable of Boston, calling on quarter sessions for the Parts of Holland of Lincolnshire, to show cause why they should not state a case so that a decision at which they had arrived could be challenged in the High Court. The magistrates of quarter sessions had allowed an appeal against a conviction by the Boston magistrates on a motoring charge and, having heard the evidence on both sides, they considered that an application by the chief constable that they should state a case for the opinion of the High Court was not justified, and they refused it. Whereupon the rule above mentioned was obtained. LORD HEWART, C.J., referred to the conflict of evidence at quarter sessions and stated that it was past his understanding to

perceive how, in the circumstances, it could reasonably be said that they were bound to uphold the conviction. Quarter sessions, the learned Lord Chief Justice went on, were perfectly justified in coming to the decision they did. The rule should never have been asked for. SWIFT, J., who also intimated that the rule should never have been asked for, said that there was a marked tendency on the part of the police who brought charges and came into conflict with the magistrates (when they decided against them) to bring them to the High Court on some pretended point of law in the endeavour to get their views upset. Public money, the learned judge continued, ought not to be spent by police or other authorities in the endeavour to put magistrates in their places. If magistrates went wrong the High Court would soon put them right, but an application such as that before the court was bringing the whole thing into disrepute. “This,” GODDARD, J., said, “looks to me—if I may use the expression—like an impudent attempt to come here to try to get the quarter sessions appeal committee scolded or put right simply because they had the temerity not to accept the evidence put forward by the dissatisfied police.” Counsel for the chief constable said that the latter felt it to be his duty to bring the case to the High Court, considering that there was a prevailing outcry about motoring cases. Particularly, the chief constable was of opinion that the matter required investigation because quarter sessions did not suggest that the police evidence should not be believed, or comment on the lack of corroborative evidence. The matter was reported in *The Times* of 16th January.

Road Safety: Causes of Accidents.

A LETTER of unusual interest recently appeared in *The Times* on the subject of road safety. The correspondent, who wrote under the pseudonym “Solicitor,” speaks as a motorist of thirty years standing and as one constantly dealing, both as a prosecutor and defender of motorists, with cases relating to charges of dangerous or careless driving. He regards the proposition that the main cause of road accidents is dangerous driving on the part of motorists as a fallacy, and urges that most accidents—not caused by pedestrians and cyclists, which he thinks are the most numerous class—are due, not to recklessness on the part of drivers, but to lack of road sense and skill. “Every good driver,” he writes in the letter referred to, “knows that he has avoided many accidents by his own foresight and presence of mind, and he can well imagine how accidents occur when cars—often in bad mechanical condition—are driven by the

week-end driver, who never really becomes in tune with his machine." This, he says, is the real problem, and if we are still to leave pedestrians and cyclists without any fear of the policeman it has the added difficulty that we have to train the motorist not only to observe the necessary traffic rules but to be prepared to save other road users from their own carelessness. The accuracy of many of this writer's remarks will be readily admitted. Indeed, the road accident statistics go far to disprove the common fallacy that the vast majority of road accidents are to be attributed solely to carelessness or recklessness on the part of drivers. But it may, perhaps, be doubted how far the foregoing statements go to absolve the motorist from blame. As the Highway Code says, "accidents are bound to happen unless due allowance is made for possible errors on the part of others," and one who, from lack of skill, or from a too optimistic regard of his own ability to extricate himself from a difficult situation, drives at such speed as to be unable to save other road users from at least a certain degree of their own carelessness can hardly be regarded as free from blame. The same writer regards the recent proposal that expert police patrols should be sent out to report cases of bad driving as the best yet made, and adds an interesting proposal of his own—namely, that these cars should be equipped with a cine camera by which police patrols could photograph such delinquencies as cars cutting in or overtaking on bends and thus obtain evidence. It is urged, moreover, that if, instead of ruthless prosecution for a first offence, a warning could be given, or, still better, if inexperienced drivers could be reported for further "L" driving and test, the stable door might be locked against some of those catastrophes which will inevitably result in future prosecutions—an admirable example, we may suggest (if the metaphor may be changed), of putting the horse before the cart.

Car Park Proprietors: Responsibility for Lost Vehicles.

A DECISION of considerable legal interest and one of special importance to motorists was given by Judge BEAZLEY at the Southend County Court recently. The plaintiff brought an action against the proprietors of a local car park claiming £50 damages in respect of the loss of a motor car which he left in the car park. On paying the requisite fee, he obtained from the attendant a receipt which stated that the proprietors did not take any responsibility for the safe custody of cars or of articles left in them, or for damage. All cars were left at the owner's risk, and owners were requested to show the ticket when required. When the plaintiff returned for his car the attendant told him it had been taken by his friend, and the car had not been recovered. The plaintiff sued for breach of contract in care and custody of the car, or, alternatively, for its conversion. The learned county court judge held that the defendants, by handing over the car as they did, committed an act of conversion and also broke an implied term of the contract not to hand it over except on production of the ticket. Judgment was given in favour of the plaintiff for £30 14s. with costs, a stay of execution being granted pending appeal. The case was reported in *The Times* of 14th January.

"Pharmacist": A Statutory Restriction.

FOLLOWING up remarks made in a "Current Topic" in our issue of 9th January, concerning the sale of drugs, brief mention may now be made of a case under the Pharmacy and Poisons Act, 1933, in which fines were imposed on a company for selling bottles of a cough mixture and a neuralgia mixture to which were affixed labels containing, with the company's name, the term "pharmacists." Section 3 (2) of the Act aforesaid provides that it shall not be lawful for a person to use in connection with any business any title, emblem or description reasonably calculated to suggest that

he or any person employed in the business possesses any qualification with respect to the selling, dispensing or compounding of drugs or poisons other than the qualification which he in fact possesses, and that for the purpose of the sub-section the use of the description "pharmacy" in connection with a business carried on on any premises shall be deemed to be reasonably calculated to suggest that the owner of the business and the person having control of the business on those premises are registered pharmacists. The defendant firm which was summoned at the instance of the Pharmaceutical Society, had several shops, and at other of their premises the words objected to had been crossed out. The use of such labels, it was urged, was likely to mislead the public to the belief that the company were qualified chemists. A fine of £10 on each of the two summonses was imposed. The proceedings, which took place at the Stratford Police Court, were reported in *The Times* of 31st December. It may further be noted in this connection that in the course of the statement referred to in our former issue, Mr. MARNs, the President of the Pharmaceutical Society, mentioned a test case under the Pharmacy and Poisons Act, 1933, in which it was held that the use of a sign bearing the words "Chemists' Sundries" was reasonably calculated to suggest that the unqualified proprietor was representing himself to be a chemist.

Pharmacy Act: Retention of Prescriptions.

MENTION may be made of yet another prosecution under the same Act and Rules which occurred at Kingston-on-Thames recently, when a chemist was summoned at the instance of the Pharmaceutical Society for failing to retain for inspection certain prescriptions containing poison, given by medical practitioners, contrary to r. 12 (4) (d) of the Poisons Rules, 1935, and to s. 24 (1) of the Pharmacy and Poisons Act, 1933. This sub-section, it may be explained, prescribes penalties on summary conviction of persons acting in contravention of the provisions of Pt. II of the Act relating to the sale of poisons. According to the report in *The Times*, there were five summonses, three of the prescriptions containing luminal, one veronal, and one allonal. It was stated for the Pharmaceutical Society that the prosecutions were the first of their kind in the country. The Act contained a schedule of drugs which chemists were only allowed to dispense on a doctor's prescription, and in certain circumstances prescriptions had to be kept on the chemist's premises for two years. For the defendant, who pleaded "guilty," it was said that the offences were due to an omission by an assistant who had failed to realise from the instructions given to him that the prescriptions had to be retained. Although the prescriptions were handed back to the customers, they were cancelled by stamping, so that there was no possibility of their being dispensed again or harm arising. This was denied on behalf of the Society. Although, technically, it would be wrong for other chemists to make up such prescriptions again, in practice, it was said, they did so, and the object of the rules was to prevent that. A fine of £1 was imposed on each summons and the defendant was ordered to pay £3 3s. costs. The chairman observed that in view of the importance of the procedure of the Act in an endeavour to stop dangerous drugs being obtained readily, the court felt bound to impose fines, and the hope was expressed that this course would make the rule more generally known.

Tithe Act, 1936: Rate Income Circular.

THE Ministry of Health has recently sent to all rating authorities outside London a communication, Circular 1587, requesting them to furnish the Department with a statement showing the rate income from tithe rent-charge in respect of the financial year ending 31st March, 1936. Forms have also been sent for entry of the required particulars. Entries should be confined to "tithe rent-charge" as defined by s. 47 of the Tithe Act, 1936, a definition not including existing corn rents

(see s. 30), particulars of which should not, therefore, figure in the returns. Reference is made in the new circular to difficulties which might arise out of the suggestion contained in para. 4 (d) of Circular 1581 (see 80 SOL. J. 883) that a claimant for refund of rates under s. 23 (2) of the Act should identify the land out of which each separate tithe rent-charge issues by a reference to the number on the Ordnance Survey Map. Where a disproportionate amount of labour and expense would be involved in the adoption of that suggestion, the Minister, it is intimated, would not object if, as an alternative, a duly certified statement were obtained from the claimant showing (a) the total of the par values of all the tithe rent-charges in respect of which he was assessed to rates by the particular rating authority for the first half of 1936-37, and (b) the total included in (a) of the par values of the tithe rent-charges which have been classified as "agricultural" in the particulars supplied to the Tithe Redemption Commission under s. 5 of the Act. A statement in this form, it is thought, should enable a rating authority to come to an equitable decision in those cases by taking the proportion of the amount in (b) to the amount in (a) for the purpose of giving effect to the provisions of s. 23 of the Act in regard to land which, on 1st April, 1936, was agricultural land. The circular indicates that the Minister desires to be furnished with such particulars as a rating authority may have in regard to tithe rent-charges (if any) other than extraordinary tithe rent-charges, in its area which were free from rates before October, 1936, or in regard to any departures from the general law concerning the ascertainment of their rateable value of tithe rent-charge there may have been under a Local Act in the period 1st April, 1933, to 31st March, 1936.

Insurance of Gardeners: New Law, 1st February.

By way of reminding readers of a fact already alluded to in these columns (80 SOL. J. 983), attention may be drawn to a recent announcement by the Secretary of the Ministry of Labour that on and after 1st February, private gardeners will in general be insurable against unemployment. Any gardener who has not already got an unemployment book should apply for one in person as soon as possible to the nearest local office of the Ministry of Labour, the address for which can be obtained at the post office. Private householders employing such gardeners will, it is stated, be responsible for seeing that they have books, and for stamping them. Further particulars can be obtained from any office of the Ministry of Labour.

Recent Decisions.

In *Sutherland Publishing Co. Ltd. v. Caxton Publishing Co. Ltd.* (p. 79 of this issue), the question in issue was how far the claim of the plaintiffs, who, as it was held by the Court of Appeal [1936] Ch. 323, were entitled to damages both in respect of infringement of copyright under s. 6 of the Copyright Act, 1911, and in respect of conversion of the infringing copies under s. 7, was affected by s. 10 of the same Act, which provides that an action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement. CROSSMAN, J., held that s. 10 applied to the claim under s. 7, as well as to that under s. 6, and that under the former, damages for conversion were limited to copies printed within three years from the issue of the writ. The order to the binders to bind the sheets containing the infringing copies constituted the conversion. The value of the unbound sheets was ascertained by reference to their sale price less the cost of binding and damages were awarded on this footing, an additional sum being awarded in respect of infringement under s. 6 of the Act.

In *Connely v. Upton Colliery Co. Ltd.* (*The Times*, 15th January), a Divisional Court upheld a decision of the Pontefract Justices who had awarded damages to the respondents under the Employers and Workmen Act, 1875,

for breach of contract against a workman in that he left his employment without notice. The latter contended that the taking on for specialised work of five men who had not previously been employed by the colliery before amounted to a breach of a work-sharing agreement, the main provision of which was that men dismissed owing to lack of work were to be gradually reabsorbed. Doubts were expressed by the Divisional Court of the accuracy of the justices' finding that this agreement was no longer binding, but, even if it were binding, the taking on of five men with special experience for the particular work did not amount to a repudiation of it, and the workmen were not entitled to cease work.

In *Price v. Representative Body of the Church in Wales* (*The Times*, 19th January), it was held that the plaintiff, the Vicar of Penmark, Glamorgan, was entitled to have paid to him so long as he held that office or any other ecclesiastical office of the Church in Wales an annuity of £528 odd, representing the tithe rent-charge attached to Coity, Glamorgan, of which he was rector at the time of the passing of the Welsh Church Act, 1914. LUXMOORE, J., declined to infer from the practice adopted by the church in Wales when a person was transferred to another ecclesiastical office that there was an arrangement under which the plaintiff agreed to accept the vicarage of Penmark on the footing that he was entitled to the annuity, but would bring into account against it the income derived from a bequest attached thereto, or to draw such inference from correspondence which had passed between the plaintiff and the then secretary of the defendant body.

In *Pratt v. London Passenger Transport Board* (p. 79 of this issue), the Court of Appeal reversed a decision of HORRIDGE, J., and held that r. 46 of Ord. XVI, which empowers the court or a judge to appoint some person or persons to represent the estate of a deceased person where it appears that the latter was interested in a matter before the court, does not apply except where the person to be appointed to represent the estate consents to be so appointed. The court, therefore, allowed the appeal of the Official Solicitor from an order appointing him to represent the estate of the driver of a motor-car who had died since the bringing of an action by a passenger therein against the London Passenger Transport Board for injuries sustained in a collision between the car and a motor-bus belonging to the Board. The latter contended that the accident was caused by the negligence of the deceased.

In view of the previous mention of the case in these columns, it may be noted that the accused in *Rex v. Lewis*; *Rex v. Valentine* and *Rex v. Williams*, were found "Guilty" at the Central Criminal Court on Tuesday, on an indictment charging them with maliciously setting fire to certain buildings belonging to His Majesty the King and maliciously committing damage to the property of the King, amounting to £2,355, between 7th and 8th September, and were sentenced to nine months' imprisonment in the second division. The proceedings were reported in *The Times* of 20th January.

In *Latter v. Colwill* (p. 79 of this issue), the Court of Appeal reversed a decision of MACKINNON, J., and gave judgment for the plaintiff under an agreement following betting transactions which resulted in the defendant owing the plaintiff £266 odd. The agreement recited the extent of the indebtedness and provided that, in consideration of the plaintiff at the defendant's request not pressing the matter before TATTERSALL's and not taking other steps, the defendant should settle the debt by handing over a pair of bronzes, together with two payments of £20. On default, the remaining balance of the original sum should become payable. The defendant defaulted in the second payment of £20, and the Court of Appeal held that the original sum, less £20 paid and the value of the bronzes, £218, therefore became payable under the agreement.

Sir Frederick Pollock.

It is with much regret that we have to record the death of Sir Frederick Pollock, whose name had for years been familiar in the profession as a learned expositor of the law. Belonging to a family which was aptly called the Mucian gens of England, a race of hereditary lawyers, its scions were destined to fill many high and important places in the courts. His grandfather was Chief Baron Pollock of the Court of Exchequer, his uncle Charles was "the last of the Barons," his father and other uncles became Masters of the Supreme Court, while his cousin, the late Lord Hanworth, became Master of the Rolls. All of them had a genius for the law, but it was reserved for Sir Frederick to become the most erudite of them all and to possess the mastery of a style which none of the others could rival. In the biography of the Chief Baron which Lord Hanworth wrote a few years ago, it was touching to read how the old man took such a pride in the academic distinctions which his grandson was winning at Cambridge, and the lively interest he took in his youthful career as a student at Lincoln's Inn. Writing to him, the Chief Baron said: "I myself read no treatises; I referred to them as collecting the authorities. I learned law by reading the reports and attending the courts, and thinking and talking of what I read and heard." At that time, however, it must be borne in mind that the profession had no such priceless treatises as "Pollock on Contracts" and "Pollock on Torts," which between them have lightened the path of countless students and practitioners. These, however, are by no means the sole product of his busy pen; indeed, the list of his writings, all marked by the same high standard of excellence, is both a long and an interesting one. To name only a few, we find they include "A First Book of Jurisprudence," "Essays in Jurisprudence and Ethics," "The Land Laws," "The Expansion of the Common Law," "The Genius of the Common Law," while in lighter vein we had those marvellous exercises in verse, "Leading Cases and other Diversions done into English," which gave so much pleasure to lawyers a generation or so ago, and of which it may be hoped we may some day have a new edition. In conjunction with that great lawyer, Mr. Justice R. S. Wright, he wrote the volume on "Possession in the Common Law," in collaboration with that other great lawyer, the late Professor Maitland, "The Noble History of English Law before the time of Edward I," and with Mr. Dinshah Fardunji Mulla a critical and explanatory commentary on the Indian Contract Act. Even this list, long though it is, does not exhaust the tale of his legal literary labours, for he was the draftsman of what is now the Partnership Act, and, as all are aware, for over forty years he was the editor of "The Law Reports," which under his supervision maintained a very high standard of accuracy; and to him, too, was due in large measure the success of the *Law Quarterly Review* in which his own contributions were always valuable, and to whose pages he was able to attract many notable writers.

In his legal youth, Sir Frederick was a pupil of Mr. (afterwards Lord) Lindley, for whom he entertained a profound admiration and to whose conscientious endeavours to give of his best to the members of his pupil room, Sir Frederick paid graceful tribute in an interesting volume of reminiscences published a year or two ago; but though trained in busy chambers, Sir Frederick never seemed ambitious of forensic fame, and rare, indeed, were his appearances in court. The present writer remembers seeing him shortly after he took silk in a case where his special knowledge was desired by the client, and, probably, that was the only occasion he appeared in the front row after he became a King's Counsel. In 1914 he was appointed Judge of the Admiralty Court of the Cinque Ports, but it is believed that it never fell to him to preside in that ancient tribunal, cases coming within its jurisdiction being nowadays few and far between.

Sir Frederick's death makes a conspicuous gap in the ranks of the truly learned men of the profession, but his classic treatises will long keep his memory green.

The Rules of the Supreme Court.

IV.—LEAVE TO SIGN JUDGMENT.

A PLAINTIFF with a "clear cut" claim, say for the price of goods sold and delivered, serves a specially endorsed writ, swears an affidavit verifying the cause of action and the amount claimed, and stating that in his belief there is no defence to the action. His advisers, on instructions and on the documents, can see no defence, and apply with confidence for liberty to enter judgment under Ord. XIV. They are met by an affidavit filed on behalf of the defendant, which appears to conflict with the plain words of a letter written by the defendant at the time of the contract, e.g., a term of credit. This is a "triable issue," and unconditional leave to defend will be granted; it is nothing that the defendant is unlikely to succeed; the merits do not matter.

This is not the intention—it is respectfully submitted—to be gathered from the plain words of Ord. XIV, r. 1, although this interpretation has now for fifty years prevailed in the Court of Appeal, especially since a decision of the House of Lords: *Jacobs v. Booth's Distillery Co.*, 85 L.T. 262. The relevant words of the rule are as follows:—

"The judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed."

The word "may" here means "shall," and the onus shifts on to the defendant: see per Greer, L.J., in *The Kodak Case* [1930] 2 K.B. 340, at p. 352.

"A triable issue" is regarded as coming within "such facts as may be deemed sufficient to entitle him to defend the action generally." What, then, is the point of the clause: "unless the defendant shall satisfy him that he has a good defence to the action on the merits"? The words would appear to be mere surplusage, considering the judicial interpretation placed upon the rule as a whole.

But whether this judicial interpretation is consistent or not with the intention of the rule, it is submitted that the time has come for procedure under Ord. XIV to be remodelled. Can it be right for a defendant to be allowed to keep the plaintiff from judgment for a few months at least—until it may be too late—by a defence which turns out to be frivolous, put in to gain time, and set up, for the first time, in an affidavit in opposition, to an application under Ord. XIV? Power, indeed, there is, to order the defendant to attend and be examined on oath (Ord. XIV, r. 3 (c)); but is this power ever exercised? A note in the "Annual Practice" (1937, at p. 189) states that it is only to be exercised "in exceptional cases." See the words of Field, J., spoken in 1884, in *Millard v. Baddeley*, W.N. 96. Even the salutary r. 6 has been deprived, in effect, of its full force:

"Leave to defend may be given unconditionally, or subject to such terms as to giving security or time or mode of trial or otherwise as the judge may think fit."

These words appear pretty plain and intelligible. Here—one would have thought—is a safeguard against a frivolous defence. Put a defendant on terms—security, for instance, or even part payment into court (the money, of course, to be refunded if he ultimately succeeds)—and that will be an earnest of his *bona fides*, or at least a protection to the plaintiff should he be the successful party. But no. Where there is a *bona fide* triable issue, the defendant is normally allowed to defend without condition, such as payment into court, or the giving of security (*op. cit.*, at pp. 197, 198). This is the working rule.

The Court of Appeal in recent times has not been oblivious to the implications of this restrictive interpretation, but, on the one hand, has felt itself bound by a long and strong

current of authority, and, on the other, has permitted some safeguards to the plaintiff. In the *Kodak Case*, Greer, L.J., pointed out that r. 6 is useful because the court may thereunder order a speedy trial where a simple issue is raised, or where the success of the defence seems improbable (at p. 353 of 1930, 2 K.B.). But it may be questioned whether such a course is always taken. True it is that an order may be made placing the case in the special list established by r. 8 (b) or—the Short Cause List—that the case may be ordered to be tried by a judge without a jury; but these provisions hardly meet the complete force of the objections raised. Again, in the same case. Slessor, L.J., states that the “unqualified discretion” on the face of r. 6 is limited to the extent that security or payment-in may not be ordered “to such an extent as would have the effect of excluding the defendant from his right to defend altogether” (at p. 363), or, in other words, would make the leave to defend “illusory.” But again, the tendency appears to be to give unconditional leave to defend—as experience and the “Annual Practice” testify.

In the case of *The Polish Bank* [1932] 2 K.B. 353, Greer, L.J., frankly deplored this effect of the order in practice (at p. 359). He thought that the practice of giving unconditional leave to defend, once there was a triable issue—regardless of merits—tended to obviate “much of the remedial effect of the order which the legislature intended it should have.” Nowhere, than on the first page of his judgment, can be found a more lucid and concise exposition of the way in which the order works. If the defendant is entitled to defend, an order cannot be made that if he does not comply with a condition, judgment shall go against him (see [1930] 2 K.B., at p. 353, as explained in [1932] 2 K.B., at p. 362). “After this period, the court is bound by the views of Denman and Manisty, JJ., in *Fuller v. Alexander* (1882), 47 L.T. 443.” But let the exact words of the learned lord justice be quoted:—

“We cannot treat the orders as *tabula rasa* upon which we may now begin to re-write.... If that had been a recent case it might have been open to this court to disagree with the decision; but it was decided in 1882; and came under consideration in the Court of Appeal in 1883, and from that time to the present it has never been suggested that the rule there laid down was not the right rule to apply... it would not be right for this court now to alter a practice which has been followed for so long.”

The moral—is it not?—is tolerably plain. Since the words of Ord. XIV, rr. 1, 3 (c) and 6 have been interpreted in a manner that would appear to conflict with their manifest intention; since, in any event, the way of the plaintiff with a liquidated demand to which there may prove no defence, becomes longer and more difficult; has not the time come to recast the order in clear and unambiguous language? Where the plaintiff can swear to the facts and can verify the cause of action and the amount claimed, and can state that in his belief there is no defence except as to damages, let the onus be upon the defendant to show merits. Let him be examined on oath, if necessary. In doubtful cases, let the judge order security or payment into court. If the judge is not “satisfied” by the defendant’s affidavit (and, if necessary, his examination), an order should be made empowering the plaintiff to enter judgment.

These suggestions—it may be objected—are not new; they are all to be found in the words of the order, as it stands. True. But the reading of the relevant notes in the “Annual Practice,” and a perusal even of a few of the cases will convince the enquirer that the order will need to be recast to achieve these desired results in the face of such high and long-standing authority.

(To be continued.)

THE LAW SOCIETY.

A Special General Meeting of the Members of The Law Society will be held in the Hall of the Society on Friday, the 29th January, 1937, at 2 p.m.

Company Law and Practice.

UPON the death of a shareholder there is bound to ensue a period of time—which may in some cases be of considerable length—in which there is not in existence a member for all purposes of the company in respect of the shares of which the deceased was the registered holder. That period continues until someone is registered as the holder of the shares in the place of the deceased—it may be the executors, who, in accordance with the provisions of the articles of association, have the shares registered in their own names, or it may be a transferee of the shares from the executors, either a purchaser or the person entitled to the shares under the will of the deceased. During the period between the death of a registered shareholder and the substitution of another member in his place, liabilities, in the shape of calls, or rights, as, for example, dividends, may arise in respect of the shares, and then it will be necessary to consider who is responsible for the liabilities and who can enforce the rights.

“Speaking generally,” said Rigby, L.J., in *James v. Buena Ventura Nitrate Grounds Syndicate Ltd.* [1896] 1 Ch. 456, “the executors of a deceased member of a limited company, as representing his estate, are entitled to all the profits and advantages attaching to the shares belonging to their testator, and subject to all the incidental liabilities, although, in terms, such profits, advantages and liabilities would seem to attach to members only.” Or, as it has been put in other cases, the estate of the deceased shareholder may be deemed to be a shareholder or member for the purposes of enjoying the benefits attached to the shares and of meeting the liabilities which the shares involve. The estate is, of course, represented by the deceased’s executors, but they receive the benefits and become subject to the liabilities not personally, as registered shareholders, but in their representative capacity. The extent of these rights and liabilities will depend to some degree upon the provisions of the articles of association of the particular company; but it is very rare for articles to deny to the estate of a deceased member what I may call the “proprietary” rights which the member if still alive would have enjoyed, or, on the other hand, to relieve the estate from the liabilities attaching to the shares; though, as we shall see, it is usual for the “personal” right to attend and vote at meetings which the shares would ordinarily confer to be suspended during such time as the deceased’s estate is the member and there is no registered holder of the shares in existence.

To consider first the question of liability for calls on shares of which the registered holder is dead. In *James v. Buena Ventura Nitrate Grounds Syndicate Ltd.*, *supra*, Lord Herschell said that “where a liability arises with respect to the shares—as, for example, where a call is made on the ‘members’—it seems... free from doubt that the liability attaches to the estate of the deceased member, and must be discharged by his representative, even though, being deceased, he is no longer, strictly speaking, a member of the company.” In a winding-up we have the express provisions of s. 160 of the Companies Act, 1929: “If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives... shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.” If they make default in paying any money ordered to be paid, the estate of the deceased may be administered. The liability of executors is, of course, in a representative capacity only—it is the estate of the deceased member which is liable. It must be borne in mind, however, that if executors elect to be and are registered as the actual holders of the shares they will become personally liable: see *Buchan’s Case*, 4 App. Cas. 549; though they will not, it

seems, be saddled with such liability in the absence of a distinct and intelligent request on their part that they should be so registered, and merely sending to the company evidence of probate, so that it may be recorded, would not of itself result in personal liability.

The estate of a deceased member, just as it will be subject to the liabilities attaching to the shares, will be correspondingly entitled to what I have called the proprietary rights which those shares confer on members. It will be a member for the purposes of an article authorising the directors to distribute the profits of the company "among the members" by way of dividend. Again, in an article providing that on the increase of the capital of the company the new shares shall be offered to the "members" in proportion to their existing shares, the word "members" would include a deceased member so long as his name is on the register; see *James v. Buena Ventura Nitrate Grounds Syndicate Ltd.*, *supra*. There, new shares had been created in the lifetime of a member but were not actually offered to the members of the company until after his death: it was held that his personal representatives could require an allotment of the shares which the deceased, whose name still remained on the register, would, if living, have been entitled to have offered to him.

In *Llewellyn v. Kasintoe Rubber Estates Ltd.* [1914] 2 Ch. 670, it was held that the right given by what is now s. 234 (3) of the Companies Act, 1929, to a member to dissent from a reconstruction scheme under that section and to require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest, is exercisable by the executors of a deceased member, although the latter have not had the shares registered in their own names. It was pointed out that in other provisions of the section, e.g., that the liquidator may on such a reconstruction receive shares in the purchasing company for distribution among the "members" of the company in liquidation, the word "members" must include the estate of a deceased member, and also that in other sections of the Act the word "member" must, for the purposes of the Act, include the estate of a deceased member; for example, s. 247, which provides that, after satisfaction of the company's liabilities, the property of the company "shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company."

So much for what I have called the "proprietary rights" of the estate of a deceased member. As I have mentioned, it is rare to find articles which deny such rights to the estate of a deceased member, nor of course could articles affect the rights given by the Act. It is not uncommon, however, to find an article in this form: "A person entitled to a share in consequence of the death of a member shall not be entitled to receive notice of or to attend or vote at meetings of the company, or, save as aforesaid, to exercise any of the rights and privileges of a member, unless and until he shall have elected to be and shall have been registered as the holder of the share." The result of such an article is that during the period between the death of a member and the registration of someone as the holder of his shares there is nobody entitled to receive notices of meetings or to attend or vote at such meetings, or to exercise any of the ordinary privileges such as requisitioning a meeting, or forming one of a quorum, or to claim in respect of the shares to be qualified as a director. But it would not exclude the executors, in their representative capacity, from enjoying the "proprietary rights" attached to the shares, e.g., receiving dividends or bonuses; such an article does not purport "to deal with the rights of deceased shareholders as such, but with the rights of executors or other persons entitled to the shares in question in consequence of death in respect of the exercise by them of rights and privileges of members" (see *Llewellyn v. Kasintoe Rubber Estates Ltd.*, *supra*, at pp. 680, 685). Reference to the 1929 Table A shows that the corresponding clause (cl. 22) is explicit on this point.

Where the name of a deceased member is still on the register and there is an article which excludes the executors from receiving notice of meetings, and the only positive provision for the giving of notice of general meetings is that such notice shall be given to members personally or by post to the registered address of each member, it appears from *Allen v. Gold Reefs of West Africa Ltd.* [1900] 1 Ch. 656, that it is not necessary in the case of a deceased member, either to send a notice addressed to him at his registered address or to serve his personal representatives: in this respect that is to say a deceased member's estate is not a member, this again being the case of a personal rather than a proprietary right. It may be noted, however, that clause 107 of the 1929 Table A requires the giving of notices of general meetings to a person entitled to a share in consequence of the death of a member who, but for his death, would be entitled to receive notice of the meeting. Where a company is unaware of the death of a member, notice of a call is effectually given if it is addressed to a shareholder at his registered address, in accordance with the ordinary article providing for the service of notices on members: *New Zealand Gold Extraction Co. Ltd. v. Peacock* [1894] 1 Q.B. 622. If the company is aware of the death, notice of the call may be given to his personal representatives. It will be appreciated, however, that in all such cases the articles of association of the particular company may contain specific provisions which govern the matter.

A Conveyancer's Diary.

THE alterations in the law made by the L.P.A., 1925, and the S.L.A., 1925, regarding estates in tail form a somewhat interesting study.

Entailed Estates and Interests.

Before 1926, for example, an estate tail could only be created or subsist in real property. There could, therefore, be no such estate in leaseholds or of course in pure personality. Even heirlooms or other personal chattels intended to follow the destination of an estate tail in real property could not be entailed. Any attempt to create an estate tail in leaseholds or other personal property simply resulted in the property vesting absolutely in the first quasi tenant in tail in possession.

Perhaps the most important change in the law in this respect is made by s. 130 (1) of the L.P.A., 1925, which provides that "An interest in tail or in tail male or tail female or in tail special may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property."

It will be noticed that although words of limitation are now unnecessary to pass an estate in fee simple such words are required to create an interest in tail. So it is still obligatory to use the words "heirs of the body" or "heirs male of the body" or "in tail" or "in tail male" or as the case may be.

Then by sub-s. (3) of s. 130 it is enacted that "Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is after the commencement of this Act directed to be enjoyed or held with, or upon, trusts corresponding to trusts affecting land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate."

This makes it possible for realty and personalty to be settled together by means of a trust for sale, the proceeds

being settled upon trusts corresponding with the limitations of a strict settlement of land. I have always advocated a settlement by way of trust for sale in preference to a settlement under the S.L.A. Every advantage that can be obtained by the latter method can, it seems to me, be achieved by the former. It is true that the legal estate in the land the subject of the settlement will be vested in the trustees: the life tenant will have an equitable interest only; but the trustees could and in an ordinary case should let the equitable tenant for life into possession. There could be inserted a provision that the trustees should not exercise their trust for sale without the consent of the tenant for life. By such means I think what is in effect a strict settlement can now best be created. The tenant for life would have no right to sell as and when he pleases, perhaps against the wish of those entitled in remainder, but on the other hand the trustees could not sell without his consent.

An important innovation is also contained in s. 176 of the L.P.A., 1925, which enacts as follows:—

"(1) A tenant in tail of full age shall have power to dispose by will by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

"(a) of all property of which he is tenant in tail in possession at his death; and

"(b) of money (including the proceeds of property directed to be sold) subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death; in like manner as if, after barring the entail, he had been tenant in fee simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been made."

The result is that a devise or bequest of entailed property has the effect of a disentailing deed provided that reference is specifically made to the property or an instrument creating the entailed interest or to entailed property generally.

It may be mentioned in passing that under the Fines and Recoveries Act, 1883, a mere conveyance in fee simple of land held in tail operates as a disentailing assurance. There is no need to use words commonly inserted such as "discharged from all entailed interests" etc. A mere conveyance in fee simple bars the entail. Now a devise has the same effect.

Another provision regarding the sale of entailed property which must be mentioned is contained in s. 42 (4) of the L.P.A., 1925, which enacts that if the subject-matter of any contract for sale or exchange of land (*inter alia*)—

"(iii) is an entailed interest in possession and the vendor has power to vest in himself or in a purchaser the fee simple in the land (or if the entailed interest is an interest in a term of years absolute such term) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute."

Before 1926 an entailed interest could not be conveyed at all. The tenant in tail could convey an interest for his own life, or by means of a purported conveyance in fee simple not enrolled as required by the Fines and Recoveries Act, could create a base fee, but his estate in tail could not be conveyed to another. Before 1926 a contract to sell an interest or estate in tail would only have entitled the purchaser to a conveyance for the life of the tenant in tail although a contract to sell the fee simple would have been effective to entitle the purchaser to a conveyance in fee simple, which when enrolled under the Fines and Recoveries Act would have vested the fee simple in the purchaser.

Section 42 (4) (iii) does not seem to have effected anything of importance. A tenant in tail could always convey an

estate for his own life, and a contract to sell the fee simple could always have been enforced.

As regards, therefore, a transfer *inter vivos* of his own interest by a tenant for life, the law remains for all practical purposes as it was before 1926, although his interest must necessarily be only an equitable one.

I must postpone considering the present position of a tenant in tail who by virtue of the S.L.A. and the transitional provisions of the L.P.A. now has the fee simple vested in him and his power to sell in such a way as to be able to receive the purchase money for his own use and benefit.

Landlord and Tenant Notebook.

ALTHOUGH until very recently there were no decisions on the point, it has been generally accepted as sound law that the effect of s. 140 of the Law of Property Act, 1925, was to enable the assignee of part of a reversion to serve a valid notice to quit with regard to that part where the owner of the original

reversion could do so, whether the tenant has recognised the severance or not. A statement to this effect can be found in Wolstenholme and Cherry's "Conveyancing Statutes," 12th ed., at p. 473. The text-book authorities are unanimous that the section overrules the recent case *In re Bebington's Tenancy* [1921] 1 Ch. 559, in which the contrary was held. (See Woodfall on "Landlord and Tenant," p. 309; Williams' "Vendor and Purchaser," Vol. 1, p. 444, 4th ed. (1936).)

It must have seemed, therefore, a somewhat daring proceeding for a county court judge recently in *Smith v. Kinsey*, 80 SOL. J. 853; [1936] W.N. 294, to hold otherwise in the face of such a weight of legal opinion. In that case the plaintiff sought possession of a garden of about 133 square yards, let at 7s. 6d. a year. The plaintiff had purchased in 1931 a garden plot from the executors of the owner of the reversion to five freehold cottages and their gardens. The four gardens were sold as one lot and the plaintiff's garden plot was sold separately. The defendant was at the time of the sale the tenant of one of the cottages, which he occupied with the plaintiff's garden plot. The special conditions of sale expressly apportioned every condition of right of re-entry. Some time later the plaintiff served on the defendant a six months' notice to quit. The action was based on the defendant's non-compliance with the notice to quit, and the learned county court judge held, apparently on the authority of *Re Bebington's Tenancy*, *supra*, that the notice to quit was bad, and gave judgment for the defendant.

The section provides: "Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry and every other condition contained in the lease shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term reversions are subsisting, as the case may be, had alone or originally been comprised in the lease. (2) In this section 'right of re-entry' includes a right to determine the lease by notice to quit or otherwise. . ."

The plaintiff appealed against the judgment in the county court, and the Court of Appeal unanimously allowed the appeal. Lord Wright, M.R., pointed out that there had been a severance by conveyance, every condition or right of re-entry appertaining to the land had been apportioned, and

the right of entry, which included the right to determine the tenancy by a notice to quit, had remained annexed to the severed part of the reversionary estate, that is to say, to the garden plot in question. Section 140 therefore applied and the notice to quit was good.

It is necessary to examine the decision in *In re Bebington's Tenancy* in order to understand exactly what alteration in the law has been effected by s. 140 of the Law of Property Act, 1925, as confirmed by the Court of Appeal. The plaintiff in that case was the lessee of a farm on a yearly tenancy terminable by twelve calendar months' notice on either side. After the plaintiff had been in possession for about fifteen years the landlord put up the farm for sale by auction in two lots, one of which was purchased by the defendant, and the other by another person. The rent was apportioned by agreement between the purchasers, but the plaintiff refused to recognise the division of the tenancy. Soon afterwards the defendant served a notice to quit on the plaintiff with regard to the premises which he had bought, and the other purchaser some days later served a notice to quit on the plaintiff with regard to the part which he had bought. The question whether the defendant's notice to quit was good was taken to the court by agreement on an originating summons.

Peterson, J., quoted *Prince v. Evans*, 29 L.T. 835, as sufficient authority to establish that a notice to deliver up part of a tenancy and not the whole was invalid. He also cited authority to show that in order to be valid a notice to quit must be one on which the tenant can act with security from the very instant at which he receives it: *Right v. Cuthbell*, 5 East, 491; *Doe v. Walters*, 10 B. & C. 626. Peterson, J., stated that the notices given by each of the purchasers of the separate parts of the reversion were both void as being given only in respect of their separate parts of the property. "It is difficult," he said, "to see how these notices together can constitute a valid notice." His lordship added that as a result of *Doe v. Johnston*, 1 McClel. and Y., 141; *Johnstone v. Huddleston*, 4 B. & C. 922, and *Doe v. Milward*, 3 M. & W. 328, a man who gives a bad notice is not afterwards precluded from saying it is void. Therefore the plaintiff was not at any time in a position to act with certainty on the notice. This was an additional reason for holding the notices to be completely void.

The facts in *Prince v. Evans* (1874), 29 L.T. 835, were that the defendant continued in possession of premises after a twenty-five years' term, and during the first year after the expiry of the term the owner of the reversion sold six acres of the premises to the plaintiff. The defendant never recognised the plaintiff as landlord but continued to pay rent for the whole premises to the original lessor, who paid over part to the plaintiff in pursuance of an apportionment of the rent which the lessor had agreed with the plaintiff. A six months' notice to quit was served with regard to the six acres, and the county court judge held that this notice was good, but this decision was reversed by a unanimous court consisting of Archibald, J., and Quain, J.

When this decision was given, the appropriate enactment was s. 3 of the Law of Property and Trustees Relief Amendment Act, 1859, which provided: "where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to all the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation . . ." Nothing was said in this Act about the validity or otherwise of a notice to quit as to part of the demised premises, nor was anything said about this in s. 12 of the Conveyancing Act, 1881, which is reproduced almost word for word in the present s. 140 (1) of the Law of Property Act, 1925. Section 140 (2), defining "right of re-entry" as including a right to determine the

lease by notice to quit or otherwise, is entirely new, and these are the words which are now held to have nullified *Re Bebington's Tenancy*, *supra*.

It is relevant to observe that a tenant who received notice to quit only part, and not the whole, of his premises would be put in some cases to intolerable hardship were it not for the remainder of s. 140 (2), which provides that "where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease with regard to the rest of the land by giving to the owner of the reversionary estate therein a counter-notice expiring at the same time as the original notice."

Section 140 of the Law of Property Act, 1925, also improves on s. 12 of the Conveyancing Act, 1881, in that the latter applied only to leases made after the commencement of the Act, while the former "applies to leases created before or after the commencement of this Act." Section 140 also applies "whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement." In the case of leases made before 1st January, 1882, the section does not affect the operation of a severance of the reversionary estate or partial avoidance or cesser of a term which was effected before 1st January, 1926.

It only remains to add that s. 140 validates a notice to quit as to part of a reversion independently of whether the rent has been legally apportioned or not. An apportionment of rent, to be binding on the tenant, must either be made with his consent or by action at law: *Bliss v. Collins* (1822), 5 B. & Ald. 876; *Swansea Corp. v. Thomas* (1882), 10 Q.B.D. 48.

Our County Court Letter.

THE CONTRACTS OF DOMESTIC SERVANTS.

THE above subject has been considered in two recent cases. In *Tomlinson and Wife v. Waite*, at Sevenoaks County Court, the claim was for remuneration for services rendered between April and September, 1933. The female plaintiff had been employed as a cook, but had also done some washing for the defendant for about fifteen weeks, starting in May. This was worth 15s. a week, and 6s. a week was due for keeping the defendant's dog for three weeks. The services rendered were worth altogether 25s. a week, and when the plaintiffs left, the defendant had promised to settle up later. The male plaintiff claimed 7s. a week for keeping the defendant's pony for three weeks. The defendant's case was that she had paid the female plaintiff a cheque for £5 17s. 11d. which represented all that was owing. His Honour Judge Konstam, K.C., gave judgment for the defendant, with costs, subject to her paying (by consent) one guinea to the male plaintiff for keeping the pony.

In *Scarlett v. Dent*, at Wallingford County Court, the claim was for £20 18s. 2d. in respect of a month's wages and damages for unlawful detention of property. The counter-claim was for £5, money lent, which was admitted. The plaintiff's case was that on the 1st May, she was engaged by the defendant as housekeeper and cook, at a wage of £70 a year, plus laundry and insurance. A letter stated that she could have every Sunday afternoon and evening off, as well as Tuesdays. On Tuesday, the 6th July, the plaintiff asked for her week's wages, but these were not due until Friday, the 10th July. In view of the unpaid loan, the defendant refused the advance, and the plaintiff therefore felt obliged to leave, early on the 7th July, on urgent business. She left a note, expressing regret, and returned only two hours later. Nevertheless, she was refused admission, and, being without luggage (which was worth nearly £10), the plaintiff had to receive food and lodging from a sympathiser elsewhere. After

correspondence between the respective solicitors a formal demand for the goods was made, at the defendant's house, but they were not delivered up. The defendant's case was that the plaintiff was quarrelsome and was therefore given a month's notice on the 2nd July. By departing early on the 7th July the plaintiff terminated her employment. Alternatively, such absence without leave entitled the defendant summarily to dismiss the plaintiff, when she presented herself for work later the same day. His Honour Judge Cotes-Preedy, K.C., remarked that the plaintiff had only been away two hours, and the defendant was not justified in excluding her. Judgment was given for the return of the goods, or their value; for £5 7s. 8d. wages, and for 10s. damages, with costs. Compare a note under the above title in the "County Court Letter" in our issue of the 5th December, 1936 (80 SOL. J. 969). It is to be noted that a householder has no right, corresponding to an innkeeper's lien, of detaining goods as security for debt.

STATUTE-BARRED TITHE.

In *Duke of Beaufort v. Watkins*, recently heard at Abergavenny County Court, the claim was for £1 5s. 10d. as arrears of tithe rent-charge. The applicant's case was that tithe rent-charge arose out of land owned by the defendant, and had been paid by someone else (admittedly by mistake) up to two years ago. The defendant's case was that the rent-charge was statute-barred, and the fact that there had been a *bona fide* payment by mistake, by someone not the owner, did not prevent the Statute of Limitations from running against the applicant. In other words, the stranger was not the authorised agent of, and the payment had not been ratified by, the respondent. His Honour Judge Thomas upheld this contention and no order was made. Compare *Asplen v. Pullin* [1917] 1 K.B. 187.

CONTRACTS FOR ADVERTISEMENTS.

In the recent case of *Holland v. Hann*, at Shoreditch County Court, the claim was for £5 4s. as the price of advertisements. The plaintiff's case was that he traded as the United Advertising Company and the defendant (without mentioning any partner) had signed an agreement for his advertisement (*viz.*, as a plastering contractor at Pembridge, Herefordshire) to appear for 104 weeks in a building society pamphlet. The defendant's case was that the agreement was filled in by the plaintiff, and was only signed on the understanding that the advertisement was to be inserted for twenty-six weeks only. A further stipulation was that it should not be effective until signed by the defendant's partner, as the firm traded as Hann and Summerfield. His Honour Judge Lilley found that the plaintiff fraudulently altered the contract, so that the defendant thought he was only contracting for twenty-six weeks. Judgment was given for the defendant, with costs. For prior references, see a note under the above title in the County Court Letter in our issue of the 26th December, 1936 (80 SOL. J. 1029).

Obituary.

SIR FREDERICK POLLOCK, K.C.

The Right Hon. Sir Frederick Pollock, Bt., K.C., died at his home in London on Monday, 18th January, at the age of ninety-one. He was educated at Eton and Trinity College, Cambridge, and was called to the Bar by Lincoln's Inn in 1871, becoming a Bencher in 1906. He was sworn of the Privy Council in 1911, was made Judge of the Admiralty Court of the Cinque Ports in 1914, and took silk in 1920. Sir Frederick Pollock was editor of the *Law Quarterly Review* from 1885 to 1919, and from 1895 until last year he had been editor-in-chief of the "Law Reports." An appreciation appears at p. 68 of this issue.

SIR WILLIAM LEESE.

Sir William Hargreaves Leese, Bt., solicitor, a partner in the firm of Messrs. Freshfields, Leese & Munns, of Old Jewry, E.C., died at Sidmouth on Sunday, 17th January, at the age of sixty-eight. He was educated at Winchester and Trinity Hall, Cambridge, and was called to the Bar by the Inner Temple in 1893. He was admitted a solicitor in 1906. In 1914 he succeeded his father, who was Recorder of Manchester, as second baronet. Sir William Leese had been solicitor to the Bank of England since 1916.

HIS HONOUR JUDGE DYER, K.C.

His Honour Judge Charles Edward Dyer, K.C., Judge of Birmingham County Court, died in Birmingham on Tuesday, 19th January, at the age of seventy-three. Educated at Oundle and Jesus College, Cambridge, he was called to the Bar by the Middle Temple in 1890, and joined the Midland Circuit in 1892. He took silk in 1919, and was elected a Bencher of his Inn in 1925. He was Recorder of Northampton from 1918 to 1927, when he was appointed a County Court Judge.

HIS HONOUR EDWARD HARINGTON.

His Honour Edward Harington, formerly a Judge of County Courts, died at his home in London, on Tuesday, 19th January, at the age of seventy-three. Educated at Westminster and Christ Church, Oxford, he was called to the Bar by the Inner Temple in 1889, and went the Midland Circuit. In 1905 he was appointed Judge of County Courts on Circuit 23, in succession to his father, Sir Richard Harington. He was also made Additional Judge on Circuit 21. He was transferred to Circuit 45 in 1908, and he retired in 1935.

MR. C. G. TALBOT-PONSONBY.

Mr. Charles George Talbot-Ponsonby, Barrister-at-Law, of Crown Office Row, Temple, died at Petersfield, on Saturday, 16th January, at the age of sixty-two. Mr. Talbot-Ponsonby was called to the Bar by the Inner Temple in 1898, and joined the Western Circuit. He practised in the Probate and Divorce Division, and also in civil and criminal cases on circuit.

MR. S. R. BAKER.

Mr. Samuel Russell Baker, solicitor, of Budleigh Salterton, died recently at the age of sixty-eight. Mr. Baker was admitted a solicitor in 1896.

MR. W. HOLLOWAY.

Mr. William Holloway, solicitor, a partner in the firm of Messrs. Holloway, Blount & Duke, of Lincoln's Inn Fields, W.C., died at Watford, on Friday, 15th January, at the age of seventy-seven. Mr. Holloway was admitted a solicitor in 1884.

MR. G. PARR.

Mr. George Parr, retired solicitor, of Nottingham, died on Tuesday, 19th January, in his ninety-second year. Mr. Parr, who was admitted a solicitor in 1867, was senior partner in the firm of Messrs. Parr & Butler, of Nottingham.

MR. J. A. SIMPSON.

Mr. John Alexander Simpson, solicitor, a partner in the firm of Messrs. J. A. Simpson, Coulby & Drabble, of Nottingham, died on Tuesday, 12th January. Mr. Simpson was admitted a solicitor in 1888. He was a past president of the Nottingham Law Society.

Mr. Joseph Hiram Chadwick, solicitor, of Rochdale, left £36,792, with net personalty £35,814.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breame Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Lease of House subsequently said to be Haunted.

Q. 3406. A and B, intending marriage, had agreed to take a lease of a detached dwelling-house. The house is a small one of the modern type and is of recent erection. The rent to be paid quarterly. After the lease was signed by them the landlord concerned told B (A's future wife) that the former occupier of the house (a widow) was reputed to be haunted by the vision of her late husband appearing in the house. Since then both A and B have been informed by several persons that the house was haunted and warned them not to live in it. Although the lease has been signed, A and B have not yet gone into occupation, but have carried out certain interior decorations. B is of a nervous disposition, and these stories of the house being haunted have affected her and she feels that she cannot live in the house. A has no wish to subject his future wife to the feeling of uneasiness which would result should they occupy the house, and feels that under the circumstances it would be wise not to do so. Can they reject the lease, having regard to the fact that the landlord informed them that the house was reputed to be haunted after they had signed the lease? They are prepared to forego the amount expended by them on decoration.

A. Apart from the fact that the condition of public opinion is not such as to justify a judge holding that there is such a thing as visitation of a house by departed spirits, the maxim "*caveat emptor*" applies, and a landlord is not bound to tell an intending tenant of any defect in the house. The lessees cannot avoid the lease.

The Rights of Hotel Proprietors.

Q. 3407. Mr. M, aged forty, stayed at a hotel during 1935-1936, but made no payments during the period of his stay. His mother, Mrs. M, also stayed there from time to time and made payments on his behalf in October, November and December, 1935, and March and April, 1936, but without holding out that she would pay all her son's accounts. The balance of his account remains undischarged. The hotel keeper contends that Mrs. M, by making payments on behalf of her son, made herself primarily responsible for his indebtedness, but is unable to produce any written evidence bringing the case within the Statute of Frauds as a contract to become liable for the debts of another. Is he likely to succeed in an action against Mrs. M?

A. The hotel proprietor has no reasonable chance of success in an action against Mrs. M. Her actions in paying certain bills were apparently voluntary gifts or *ex gratia* payments. They were not referable to any express or implied contract, and the mere fact of payment does not create a liability for any other further payments.

Income Tax under Separation Deed.

Q. 3408. Some four years ago our client, A, entered into a deed of separation with his wife, B. It was therein stipulated that A should pay to B the sum of £4 per week without any deduction whatsoever. A has accordingly for the last four years paid her the sum of £4 per week. The Inspector of Taxes has from time to time raised the question of deduction, and pointed out that A should pay the weekly allowance less the appropriate deduction in respect of the standard rate of tax, but as A did not do so the Revenue have hitherto made a compassionate allowance, and only charged A with

the amount of tax which B would have to pay if she were receiving the income of £208 as a *feme sole*. Our client has in consequence of this arrangement paid approximately £10 per annum more than he would do if he were to deduct tax at the standard rate from the weekly allowance and compel B to reclaim the amount due to her in the ordinary way. The Revenue are now somewhat insistent that A should make this usual deduction and point out that any agreement to the contrary is invalid. On this matter being mentioned to B, she has refused to agree thereto, and claims that the wording of the separation agreement debars A from making any such deduction. In the circumstances is A justified in making the deduction despite the wording of the separation agreement?

A. The Revenue are correct in their contention that any agreement to pay the amounts without any deduction is void. See Income Tax Act, 1918, All Schedules Rules, r. 23. A is therefore entitled to deduct tax, but B is entitled to have the deed rectified so as to provide for her receiving £4 a week net. See *Burroughs v. Abbott* [1922] 1 Ch. 86. The deed, when rectified, should be in the same terms as the deed in *Booth v. Booth* [1922] 1 K.B. 66.

Price Maintenance Agreements.

Q. 3409. Our clients state that they understand it has been held in the High Court that the payment of a dividend to members of a co-operative society does not constitute a breach of "price maintenance" conditions of sale of goods. Do you know of any such case? The point our clients have in mind is, apparently, whether a co-operative society can pay a "dividend" on price maintained articles.

A. No such case is known, but the opinion is widely held that the validity of payments of dividends on price-controlled goods should be tested in the High Court. It has long been a grievance of private traders that such dividends are contrary to the spirit of price maintenance conditions imposed upon ordinary traders.

Gift or Pure Personality to the Children of a Deceased Sister Contingent upon Attaining Twenty-one—Ascertainment of Class.

Q. 3410. A testator bequeathed half of the residue of his estate in trust for all the children of his late sister who attained the age of twenty-one years, if more than one, in equal shares. The sister who was dead at the time the testator made his will, left three children, all living at that date, one of whom predeceased the testator. Should the half of the residue be divided equally between the two children who survived the testator or is the estate of the deceased child entitled to one-third?

A. We express the opinion that the deceased child (who died in the lifetime of the testator) must be excluded from participation. We quote the following from the judgment of Sir R. P. Arden, in *Viner v. Francis*, 2 Cox. 190, where (*inter alia*) a bequest to "the children of my late sister Mary Crowser" of "the sum of £2,000 to be equally divided among them" was in point. "How, when a testator gives a fund to be divided amongst his own children, he shall be supposed to mean such children as shall be living at the time of his death. If so, why should I suppose that, the sister being dead, he meant anything else than what would be imputed to him in the other case."

To-day and Yesterday.

LEGAL CALENDAR.

18 JANUARY.—Sir William Dalison, a Justice of the Queen's Bench, died on the 18th January, 1559, and was buried in Lincoln Cathedral. He was called to the Bar in 1537, at Gray's Inn, which, when he left in 1552 to assume the order of the coif, presented him as a farewell gift with a pair of gloves and £5. Three years later he became Serjeant to King Philip and Queen Mary, and soon afterwards was raised to the Bench. His name is kept alive for practitioners by the reports which bear it.

19 JANUARY.—On the 19th January, 1870, Jean Baptiste Tropmann, a young man not more than twenty years old, was executed in the Place de la Roquette in Paris for a series of eight murders by which he had annihilated a family to get possession of their property. He persisted in refusing to tell the truth about his crimes, and when he was placed on the plank of the guillotine struggled violently and with amazing strength to keep his head from under the knife, biting the finger of the executioner. There was a short, sharp tussle, and his head fell just as the clock was striking seven.

20 JANUARY.—On the 20th January, 1802, Joseph Wall, formerly Governor of Goree, was tried at the Old Bailey for a twenty-year-old crime, the case lasting from nine in the morning till eleven at night. He was charged with the murder of a sergeant whom he had caused to be flogged by black slaves on an unsupported accusation of mutiny. After receiving eight hundred lashes, the man had died. The feeling against Wall on his return to England had been such that he had been forced to spend the greater part of twenty years on the Continent. Coming back now to stand his trial he was convicted and executed.

21 JANUARY.—In December, 1816, an extraordinary outbreak in which a man named Watson, "an indigent person of the medical profession," was a ringleader, alarmed all London. A revolutionary mob, gathered in Spa Fields, plundered a gunsmith's shop and marched through Cheapside to the Royal Exchange, where they defied the Lord Mayor and fired on those who opposed them. It was night before the police and the military completely succeeded in dispersing them. On the 21st January, 1817, Watson was tried at the Old Bailey on the charge of having stabbed a man with a sword stick, but the victim not having been able to swear that the wound was inflicted by design, the prisoner was lucky enough to be acquitted.

22 JANUARY.—On the 22nd January, 1805, a trusted clerk named Turner was tried at the Old Bailey for having forged a receipt for the sale of £7,000 worth of stock which came into his power through his firm. The stockbroker through whom he had acted had not actually transferred the stock, and his counsel strenuously argued that the crime was not therefore complete, but the court rejected the plea, and the law being what it then was, Turner was sentenced to death.

23 JANUARY.—On the 23rd January, 1620, Sir John Croke, a Justice of the King's Bench, died in his sixty-sixth year, in his Holborn house.

24 JANUARY.—On the 24th January, 1781, Lord George Gordon, the agitator whose irresponsible frenzy had caused such disastrous destruction of life and property in the Gordon Riots, was brought from the Tower to the King's Bench that a day might be fixed for his trial on a charge of treason. He was full of complaints. He had heard that witnesses against him were to be brought from Scotland, that the judges had been consulted upon his case, that the "overt act" relied on by the Crown should have

been set forth in the indictment. Lord Mansfield pacified him with the assurance that he would be granted every indulgence.

THE WEEK'S PERSONALITY.

In his family record Mr. Justice Whitelocke wrote: "Upon Sunday the 23 of January, 1619-20, Sir John Croke, my wife's uncle by her mother, one of the justices of the King's Bench, dyed at his house in Holborn. He was full 65 years of age upon the 15 of the same monethe. He was a vertuous and religious man, verry kinde and affable to all lawyers that practized before him, and all suitors that had to do withe him." He had been in the King's Bench for over twelve years. Before then he had been both Recorder of London and Speaker of the House of Commons. From one little joke at his expense it appears that his complexion was noticeably dark, for when someone in his time said that the Recorder was the mouth of the City, a wit replied: "Then the City hath a black mouth, for he is a verry black man." When he was elected Speaker, "being a gentleman, very religious, very judicious, of a good conscience and well furnished with other good parts," he made a long speech and "very learnedly and eloquently endeavoured to disable himself at large, alleging his great defects both of nature and of art fit to supply that place," but elected he was, and at the close of the session Elizabeth sent him a message that he had "proceeded with such wisdom and discretion that it is much to your commendations and that none before you have deserved more."

MIRACULOUS EVIDENCE.

That instructive collection of wonders "Believe it or Not," recently recalled the miracle of El Cristo de la Vega. Two ardent Spanish lovers, Inez de Vargas and Captain Diego Martinez, had plighted their troth before this crucifix, but the fickle soldier broke his vow and when the injured lady brought the matter to court denied his promise. Then the judge called the crucifix as a witness, and, at a tense moment, the right hand of the Saviour's image became unfastened and pointed accusingly at the defendant, retaining this gesture to this day. Lest any should think that our own jurisprudence has never been favoured with such conclusive testimony, I venture to recall the story of Mr. Justice Beaumont, an Elizabethan worthy, before whom came two adversaries, one praying that if he lied the ground might swallow him up. Immediately, the ground did open, but the judge pointing with his finger caused it to close again. There is testimony four generations later that the traditional place sounded hollow when struck.

LAWYER AND DIVINE.

A letter in a Sunday paper recently recalled the old story of the discussion as to the relative importance of the functions of a bishop and a judge. "I," said the bishop, "can say: 'You be damned,' whereas, you can only say: 'You be hanged.'" "Agreed," replied the judge, "but when I say 'You be hanged,' you generally are hanged." This tale inevitably recalls another of Lord Chancellor Thurlow who, without authority, often made use of the episcopal adjuration. Once, indeed, in the course of a controversy with a bishop over the right to present to a certain living he bade the holy man's secretary: "Give my compliments to his lordship and tell him that I will see him damned first before he shall present." "This, my lord," protested the messenger "is a very unpleasant message to deliver to a bishop." "You are right. It is so," agreed Thurlow. "Therefore, tell the bishop that I will be damned first before he shall present."

The death occurred on Saturday, 9th January, of Mr. Charles Lenton Green, who had been for more than fifty-one years a trusted and valued member of the staff of Kennedy, Ponsonby, Ryde & Co., and its amalgamated firms.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

Appeals under the Ribbon Development Act.

Sir,—The following details of an appeal under s. 7 (4) of the Restriction of Ribbon Development Act, 1935, against a decision of a highway authority, under s. 2 (1) of that Act, are, we think, of some importance to practitioners.

The consent of the "X" corporation, which was the appropriate highway authority, was applied for under s. 2 (1) of the Act to the complete re-erection of certain roadside premises upon a building line within 220 feet of the centre of the road. Section 2 (1) provides that no means of access shall be laid out to or from, or any building erected within 220 feet of a classified road without the consent of the highway authority. Section 7 (1) (b) excepting re-erections from the provisions of s. 2 (1) was inapplicable as the re-erection was a complete one within the Third Schedule to the Act.

The consent of the "X" corporation was given to a re-erection of the premises upon a building line approximately 92 feet from the centre of the road and 20 feet further back than the original building line, subject to the following condition:—

"That the land between the present boundary of the public highway and the improvement line as laid down by the Middlesex County Council shall be dedicated to the public as part of the highway."

The effect of this condition would have been that the corporation would have acquired free of any payment of compensation a considerable area of land of an average depth of 24 feet, the property of the owners of the premises.

An appeal was made to the Minister of Transport under s. 7 (4) of the Act, which provides for such appeals where an applicant for consent under s. 7 (1) is aggrieved by the imposition of a condition by a highway authority. The appeal was by letter, accompanied by a copy of the application to the "X" corporation and a copy of the "X" corporation's decision. The grounds of the appeal were:—

"The condition was not reasonable according to Section 7 (1) (c) of the Act in that Section 13 provided for the acquisition by Highway Authorities of land within 220 yards of the centre of Roadway for road purposes at an agreed price or failing that by compulsory purchase order. Accordingly it was not the policy of the Act that persons should be deprived of land without any compensation by the making of consents under Section 2 (1) conditional upon gifts of land."

Neither party required the Minister to hold an enquiry, and he therefore determined the appeal on the information submitted to him in writing. A copy of a letter sent to the Minister by the "X" corporation setting out their views was sent by the Minister to the appellants and the appellants were permitted to make a reply to the Minister to this letter. A copy of their reply was sent to the "X" corporation at the request of the Minister.

The substance of the views of the "X" corporation were:—

(1) A bald and unsupported statement that the condition was a reasonable one;

(2) An allegation that, in regard to compensation, the owners of the premises were protected by s. 9.

The appellants countered these views with the following arguments:—

(1) Whatever the circumstances a condition could not be reasonable which enabled a highway authority to obtain land free when there were express provisions in the Act for the payment by highway authorities of compensation for such land acquired for the purposes of the Act;

(2) Section 9 of the Act was inapplicable, being a section dealing with the payment of compensation to an owner of

land which had depreciated in value owing to the annexation thereto of restrictions under ss. 1 and 2 of the Act. It was not a section providing for the payment of compensation in respect of land of which the owner had been deprived.

The Minister decided in favour of the appellants on the grounds that the condition was unreasonable in view of the special provisions made in the Act for the acquisition by highway authorities of land required for the improvement of roads (s. 13). An Order was therefore made requiring the corporation to delete the condition from their consent.

If this decision had been given in a court of law it would have become generally known and would obviously have been regarded as of some importance by members of our profession. It is for that reason we have written to you at this length.

New Square,
Lincoln's Inn, W.C.2.
19th January.

HUNTERS.

Reviews.

The New County Court Procedure. By G. M. BUTTS, Solicitor of the Supreme Court. 1936. Demy 8vo. pp. xvi and (with Index) 151. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Limited. 10s. 6d. net.

This book (the work of a practising solicitor) will form a useful guide to practitioners, and court officials, requiring a quick and easy means of reference to the contrasts between the old procedure and the new. The various innovations, e.g., those in the third party procedure, are fully discussed, and the subject of costs is adequately dealt with. The rules have allowed no transitional period, except in respect of proceedings pending on the 1st January, 1937, and this work supplies a want which will be felt by those accustomed to the old methods of bringing a case to trial. The County Court (Amendment) Rules, 1936, are included, and the text is, therefore, accurate and up-to-date to the 1st January, 1937. Being handy in shape and easy to carry, this book should find a permanent place in legal libraries, as a supplement to the more voluminous books on practice.

Books Received.

County Court Notebook. By ERSKINE POLLOCK, LL.B., Solicitor (Honours). Second Edition, 1937. Crown 8vo. pp. 31. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

Principles and Practice of The Criminal Law. By SEYMOUR F. HARRIS, B.C.L., M.A. (Oxon). Sixteenth Edition, 1936. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn and the Western Circuit, Barrister-at-Law. Demy 8vo. pp. lii and (with Index) 730. London: Sweet & Maxwell, Ltd. 15s. net.

Meetings, Uniforms and Public Order. 1937. Demy 8vo. pp. 47. London: Jordan & Sons, Ltd. Price 6d.

The Law of Housing. By W. IVOR JENNINGS, M.A., LL.D., of Gray's Inn, Barrister-at-Law, Reader in English Law in the University of London. With a Chapter on Housing Finance and Accounts, and Financial Notes by FRANK E. PRICE. Second Edition, 1936. Royal 8vo. pp. xlv and (with Index) 715. London: Charles Knight & Co., Ltd. 35s. net.

The Municipal Year Book, 1937. Edited by JAMES FORBES. London: The Municipal Journal, Limited. 30s. net.

Guide to the Tithe Act, 1936. By A. H. COSWAY. 1937. Crown 8vo. pp. x and (with Index) 102. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Notes of Cases.

Judicial Committee of the Privy Council.

Forbes v. Attorney-General for Manitoba.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen,
Lord Macmillan and Lord Maugham.

17th December, 1936.

MANITOBA—SPECIAL INCOME TAX IMPOSED—WHETHER
DIRECT TAXATION—DOMINION CIVIL SERVANT IN THE
PROVINCE—SALARY RECEIVED WITHOUT DEDUCTION—
RIGHT OF PROVINCIAL LEGISLATURE TO MAKE DEDUCTION—
SPECIAL INCOME TAX ACT (MANITOBA), 1933.

Appeal from a majority judgment of the Supreme Court of Canada dated the 15th January, 1936, affirming the unanimous judgment of the Court of Appeal of Manitoba, dated the 12th November, 1934, which affirmed the judgment of the County Court of Winnipeg, dated the 8th June, 1934, in favour of the respondent.

By s. 3 of the Special Income Tax Act, 1933 (Manitoba), "(1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to his Majesty for the raising of a revenue for Provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part . . ." The appellant, Forbes, was a Dominion civil servant, who received in Manitoba his salary from his employers, the Dominion Government. No deduction being made from the salary, the respondent brought this action against the appellant for the amount of the tax imposed by the Act of 1933, as assessed on his salary for the period from the 1st May to the 31st December, 1933.

LORD MACMILLAN said that the appellant's first submission was that the tax on wages which the Act imposed was not "direct taxation within the Province in order to the raising of a revenue for Provincial purposes" within the meaning of s. 92 (2) of the British North America Act, 1867, and was consequently invalid. That argument would, if sustained, invalidate the tax as regards all wage-earners in Manitoba. All were agreed that an income tax was the most typical form of direct taxation. If then the tax in question was an income tax, there was an end of the matter. *Prima facie* the tax was an income tax. The statute imposing it was entitled "An Act to Impose a Special Tax on Incomes." The Act as a whole covered all taxable income. In their lordships' opinion, s. 3 was what it professed to be, a section charging the tax on the employee. The sections which provided for the deduction of the amount of the tax by the employer before he paid over his employee's wages were mere machinery of a very familiar type in income tax legislation. The present tax was a direct tax on employees in respect of that portion of their income which consisted of wages. The appellant's second contention was that it was incompetent for the Provincial Legislature to tax the income of a Dominion civil servant. Lord Hobhouse, in *Bank of Toronto v. Lambe*, 12 App. Cas. 575, at p. 584, had, however, said that: "Any person found within the Province may legally be taxed there if taxed directly." The validity of imposing direct taxation by Provincial legislation on a Dominion official had been expressly established by authority in *Abbott v. City of St. John* [1908] 40 Can. S.C.R. 597, which was approved by that Board in *Caron v. R.* [1924] A.C. 999. In their lordships' opinion, that contention failed. Next, the appellant submitted that he was not an "employee" at all within the meaning of the Act, and, further, that the Dominion was not his employer. But the Act was quite explicit, and the appellant clearly fell within the definition of "employee" in s. 2 (1) (b). The appellant, however, sought to argue

that, even if he was an employee, the Dominion Government was not his employer within the meaning of the Act. In their lordships' view it was not *ultra vires* of the Provincial Legislature to provide that, if a wage-earner within the Province received his wages from an employer outside the Province without deduction of tax, the wage-earner should himself pay the tax, whether the outside employer be the Dominion Government or anyone else. Such legislation was not legislation affecting persons outside the Province with any duty or liability. The last ground on which the appellant took his stand was even less tenable. He submitted that the Dominion Parliament by enacting a general Dominion income tax in 1917 had already so occupied the field of that form of taxation as to preclude the Manitoba Legislature from enacting any income tax legislation. In their lordships' opinion that submission, which, if well founded, would invalidate the whole Act, was based on a misconception of the doctrine of the "occupied field" evolved in the interpretation of the British North America Act. The doctrine of the "occupied field" applied only where there was a clash between Dominion legislation and Provincial legislation within an area common to both. Here there was no conflict. Both income taxes might co-exist and be enforced without clashing. The Dominion reaped part of the field of the Manitoba citizen's income. The Province reaped another part of it. That argument therefore also failed.

COUNSEL: C. E. Finkelstein, for the appellant; I. Pitblado and W. E. McLean, for the respondent.

SOLICITORS: Herbert Smith & Co.; Blake & Redden.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Barker v. Allanson and Others.

Greer and Scott, L.J.J. and Eve, J.

23rd and 24th November, and 18th December, 1936.

PRACTICE—GOODS SUPPLIED TO MEMBERS OF TRADE UNION—ACTION FOR DECLARATION THAT PAYMENT WAS DUE BY MEMBERS OUT OF FUNDS OF LODGE—MAJORITY OF MEMBERS NEW SINCE SUPPLY OF GOODS—OFFICIALS SUED AS REPRESENTING GENERAL BODY—REPRESENTATION ORDER—R.S.C. ORD. XVI, r. 9.

Appeal from a decision of Greaves-Lord, J.

On the 12th August, 1936, the plaintiff issued a writ against the four defendants who were respectively, financial secretary, treasurer, chairman and general secretary of the Chilton Colliery Lodge of the Durham Miners' Association. The claim was for £135 18s. the balance of the price of goods sold and delivered in 1921 to various members of the lodge at the request and to the order of the lodge. (The full value of the goods supplied was £432 5s. but credit had been given for payments on account made between 1922 and 1930, amounting to £290 7s., and some payments amounting to £6 made by a man named Ord.) The plaintiff stated on affidavit that he gave credit to the lodge and not to any individual member; most of the persons supplied were unknown to him, and without the lodge's orders he would not have supplied them. The order form stated the name of the member to be supplied and the value to which he was to be supplied, and was signed by the secretaries. On it were the words: "This ticket is invalid unless embossed with Lodge stamp." On the 20th August, a representation order was made, on the plaintiff's application, ordering the defendants to defend the action on behalf of the lodge and the association. The writ and order having been served on them, they entered a conditional appearance. An application by the defendants to set aside the writ and the order was dismissed on the 26th October, and on the same day the statement of claim endorsed on the writ was amended by the addition of the italicised words so as to claim "against the defendants as

representing the general body of the members of the Chilton Colliery Lodge of the Durham Miners' Association, a declaration that the sum of £135 18s., the balance of the price of goods sold and delivered to various members of the said Lodge, at the request and to the order of the said Lodge, is due and owing to the plaintiff from the members of the said Lodge, and is payable to the plaintiff out of the funds of the said Lodge." The facts relied on by the defendants were as follows. There were in 1921, 1,093 members of the lodge, of whom most had now ceased to be members. There were now 841 members, the majority of whom had joined since 1921. Of the four officers sued, only the treasurer had then held his office. The financial secretary had not been a member, and the chairman had been, as an infant, only a half-member. In 1921, only eighty-nine members had received goods from the plaintiff. Of these, nineteen were still members. Some of the rest had died and some had left. Some of those who received goods had paid for them. The funds of the lodge comprised the balance from time to time standing out of the members' subscriptions, and the liability of the members did not exceed the liability for subscriptions. There were no trustees. The payments for which the plaintiff had given credit were not made out of lodge funds, but were made under an arrangement between the treasurer, the receivers of the goods and the plaintiff, and such amounts as the treasurer received from them he paid to the plaintiff. Neither the defendants nor the lodge had funds in their possession or power which could lawfully be applied to paying the claim. The only moneys paid with the authority and consent of the members consisted of subscriptions paid by the members for the specific purposes provided for by the rules of the Durham Miners' Association, and the treasurer had no authority to deal with the moneys for other purposes. Greaves-Lord, J., set aside the writ and representation order.

GREER, L.J., dismissing the plaintiff's appeal, said that he was satisfied the judge was right in setting aside the representation order. Though he was not quite satisfied that he was right in setting aside the writ and subsequent proceedings, he did not think the court was entitled to reverse his order. The claim was (1) for a declaration that the 841 lodge members made defendants by the representation order were liable to pay the sum claimed; and (2) a declaration that they were entitled to resort to the lodge funds for payment. But all the defendants had not the same interest in the cause within Ord. XVI, r. 9. Most of them, if they had been named as defendants, would have been entitled to prove that they were not members in 1921, and that the goods were not ordered by them or with their authority. Others might have been able to plead the Statute of Limitations, proving that they had had no part in the payments made from time to time to the plaintiff. Others might have had no answer. This case was within *London Association for Protection of Trade v. Greenlands* [1916] 2 A.C. 15, at p. 39; and *Ideal Films Ltd. v. Richards* [1927] 1 K.B. 374, did not apply.

COUNSEL: J. Charlesworth; G. N. Black.

SOLICITORS: Sayer, Ledgard & Smith, agents for Thomas Jennings & Haggie, of Bishop Auckland; T. D. Jones & Co., agents for Ronald Williams, of Durham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Barber v. Pigden.

Greer and Scott, L.JJ., and Eve, J.

18th and 19th November and 18th December, 1936.

HUSBAND AND WIFE—ACTION FOR SLANDER—WORDS SPOKEN BY WIFE—HUSBAND'S LIABILITY—RETROSPECTIVE EFFECT OF STATUTE RELIEVING HIM—NO SEPARATE DAMAGES AWARDED IN RESPECT OF EACH PUBLICATION—NO OBJECTION BY DEFENDANTS—LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935 (25 & 26 Geo. 5, c. 30), ss. 3, 4; R.S.C. ORD. 39, r. 6.

Appeal from a decision of Talbot, J.

The plaintiff claimed damages against the defendants, a husband and wife, in respect of slanders alleged to have been spoken by the wife on three different occasions in 1934, and early in 1935. The writ was issued after the coming in operation of the Law Reform (Married Women and Tortfeasors) Act, 1935, on the 2nd August, 1935. Talbot, J., did not direct the jury to find a separate verdict on each of the alleged slanders or to find separate damages in respect of each, leaving it to them to award a lump sum covering all the allegations. At the time the defendants did not object. The jury awarded £300 damages, and judgment was entered against both defendants. They appealed.

GREER, L.J., in giving judgment, said that till 1935 a husband was liable to be sued for damages for his wife's torts. The male defendant contended that his liability was terminated by ss. 3 and 4 of the Act of 1935. (There was no evidence that the words were spoken with his authority.) Further, both the appellants argued that the verdict was not valid because separate damages were not awarded in respect of each publication, and they relied on *Weber v. Birkett* [1925] 1 K.B. 720; [1925] 2 K.B. 152. As to this point, the publication of defamatory words in 1934 constituted a cause of action distinct from the publication in 1935, and that would have been a ground for saying that there was no verdict in respect of which judgment could be entered had the defendants' counsel not allowed the judge, without protest, to give one verdict in respect of all the occasions on which defamatory words were spoken, so that they were not now entitled to take the point that the verdict was bad (see *Nevill v. Fine Arts & General Insurance Co.* [1897] A.C. 68, at p. 76, and *Seaton v. Burnand* [1900] A.C. 135). *Weiser v. Segar* (No. 2), 48 SOL. J. 457, was not a similar case. The judge was not asked to take the verdict of the jury in reference to each of the alleged slanders separately. The case was within R.S.C. Ord. 39, r. 6, and no miscarriage of justice was occasioned. As to the first question, by reason of ss. 3 (b) and 4 (1) (b) of the Act, the statute was retrospective and ended the husband's liability for his wife's torts whenever committed, unless legal proceedings had been commenced before the passing of the Act. His lordship added that he accepted the law laid down in "Maxwell on Interpretation of Statutes," 7th ed., p. 186. The husband's appeal must be allowed and the wife's dismissed.

SCOTT, L.J., and EVE, J., agreed.

COUNSEL: Carthew, K.C., and Adeodato Pereira; Gerald Slade.

SOLICITORS: A. W. Jennings; Cosmo Cran & Co.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Newport v. Pougher.

Lord Wright, M.R., Romer and Greene, L.JJ.

11th January, 1937.

SOLICITOR—ACTING FOR PLAINTIFF IN ACTION FOR DISSOLUTION OF PARTNERSHIP—JUDGMENT FOR RECEIVER, ACCOUNTS AND INQUIRIES—PARTNERSHIP INSOLVENT—JUDGMENT AND CHARGING ORDER OBTAINED BY CERTAIN CREDITORS—CHARGING ORDER FOR COSTS OBTAINED BY SOLICITOR—PRIORITIES—SOLICITORS ACT, 1932 (22 and 23 Geo. 5, c. 37), s. 69.

Appeal from a decision of Eve, J. (80 SOL. J. 953).

In 1933 judgment in an action for dissolution of partnership was given in the usual form for a receiver, accounts and inquiries. The defendant partner was soon afterwards declared bankrupt. The receiver collected and paid into court various partnership assets. The firm was insolvent. Certain creditors who obtained a judgment against the partnership in 1935 for £178 and costs obtained on the 17th July an order in their favour in the form first settled in *Keowney v. Attrill*, 34 Ch. D. 345, whereby the court declared that they were entitled to a charge for the amount of their judgment

debt, interest and costs upon the assets then or thereafter coming into the hands of the receiver, and they submitted that the charge should be dealt with in such manner as the court should direct, the court's intention being to preserve to them such legal rights as they would have had if the sheriff had seized under the execution and sold that day. On the 31st July the solicitor who had acted in the partnership action for the plaintiff and the solicitors who had acted for the defendant obtained charging orders on the fund paid into court under s. 69 of the Solicitors Act, 1932. (The plaintiff had now no means to proceed with the partnership action.) On a petition by the solicitor for payment of his costs out of the fund in court, Eve, J., held that the charging order in the form in *Kewney v. Attrill*, *supra*, gave no priority over the general body of creditors but that by virtue of the charging order under the Solicitors Act the claim of the solicitors ranked in front of all other claims. The creditors who had obtained the first charging order appealed.

LORD WRIGHT, M.R., allowing the appeal, considered the case of *Kewney v. Attrill*, *supra*, and the order made, and said that the order gave to the person obtaining the charge priority over the general body of creditors.

ROMER and GREENE, L.J.J., agreed.

COUNSEL: *Daynes*, K.C., and *J. Brightman*; *E. Holland*.

SOLICITORS: *Mills, Lockyer, Church & Evill*; *A. E. Samuels & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Pratt v. London Passenger Transport Board.

Greer, Slessor and Scott, L.J.J. 19th January, 1937.

PRACTICE—ACCIDENT—MOTOR CAR COLLISION—ACTION FOR PERSONAL INJURIES AGAINST ONE DRIVER—OTHER DRIVER KILLED—APPLICATION TO ADD OFFICIAL SOLICITOR AS REPRESENTING HIS ESTATE—ORD. XVI, r. 46.

Appeal from a decision of Horridge, J.

The plaintiff was a passenger in a motor car involved in a collision with a vehicle belonging to the defendants and was injured. In this action by him alleging negligence on the part of their servant, the driver, the defendants denied negligence and alleged negligence on the part of the driver of the motor car, who had since died. The plaintiff having applied to amend the writ by adding the Official Solicitor as representing the deceased's estate, Horridge, J., made an order accordingly.

GREER, L.J., allowing the Official Solicitor's appeal, said that an appointment under Ord. XVI, r. 46, could not be made without the consent of the person who might have to be active and to incur expense in the proceedings (see *In re Curtis and Betts* (1887), W.N. 126). Here there was no consent.

SLESSOR and SCOTT, L.J.J., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *T. Turner*; *A. G. Gordon*.

SOLICITORS: *Official Solicitor*; *F. Gilbert Outred & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Latter v. Colwill.

Greer, Slessor and Scott, L.J.J.

20th January, 1937.

CONTRACT—DEBT OF £226—AGREEMENT BY DEBTOR TO SATISFY DEBT BY DELIVERY OF TWO STATUES AND BY TWO PAYMENTS OF £20—IN CASE OF DEFAULT WHOLE THEN REMAINING BALANCE TO BECOME DUE—DEFAULT IN LAST INSTALLMENT—WHAT AMOUNT DUE.

Appeal from a decision of MacKinnon, J. (80 SOL. J. 346).

In consequence of several betting transactions with him, the defendant owed the plaintiff, a bookmaker, £266. Owing to difficulty in payment, the parties in November, 1935, entered into an agreement whereby the debt was acknowledged and the defendant, in consideration of the plaintiff's forbearing to press his claim before Tattersall's Committee,

undertook to settle all the plaintiff's claims against him by giving him a pair of bronze statues and £20 on the 4th November, 1935, and £20 on the 1st January, 1936. The defendant further agreed that if he should default in delivering the bronzes or paying the instalments on the due date, the whole then remaining balance on the original sum of £266 should become due and payable forthwith. The statues were duly delivered and the first £20 paid, but the defendant defaulted with regard to the second payment. The plaintiff sued to recover £218 (allowing the £20 paid and £28 as the value of the bronzes). The defendant paid £20 into court. MacKinnon, J., gave judgment for the plaintiff for £20 without costs.

GREER, L.J., allowing the plaintiff's appeal, said that before the agreement the plaintiff could not have recovered the sum then due on the betting transaction, but the agreement was not void for illegality (*Hyams v. Stuart King* [1908] 2 K.B. 696). Its meaning was that the defendant agreed to pay on default the whole then remaining balance of the original sum and the remaining balance might in certain circumstances be the whole amount. If the question had arisen by reason of the failure to pay the first instalment and the remaining balance of the original sum had then become due the only sum which could be regarded as the original sum would have been the £266. It must mean the same whether the default were in the first transaction or the last.

SLESSOR, L.J., agreed and SCOTT, L.J., dissented.

COUNSEL: *Hanworth*; *Senter*.

SOLICITORS: *Leslie Morrison*; *Kenneth Brown, Baker, Baker*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Sutherland Publishing Co. Ltd. v. Caxton Publishing Co. Ltd.
(No. 2).

Crossman, J. 14th January, 1937.

COPYRIGHT—BOOK—INFRINGEMENT AND CONVERSION—LIMITATION OF ACTIONS—MEASURE OF DAMAGES—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 43), ss. 6, 7, 10.

The plaintiffs published a technical book called "Heating and Ventilation," a considerable portion of which was subsequently incorporated in the third volume of a book called "The Modern Practical Plumber," published by the defendants who were then unaware of the earlier work. The plaintiffs brought an action claiming damages under the Copyright Act, 1911, for infringement under s. 6 and conversion of infringing copies under s. 7, the writ being issued on the 2nd May, 1935. On a preliminary point of law, the Court of Appeal held that the remedies in damages for infringement and damages for conversion were cumulative and not alternative (80 SOL. J. 145). On the trial of the action, the question arose whether s. 10 under which "an action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement," applied also to the action so far as damages for conversion were claimed.

CROSSMAN, J., in giving judgment, said that the claim under s. 6 was for a wrong done to an incorporeal right and the measure of damages was the depreciation caused by the infringement to the value of the copyright, and the claim under s. 7 was for conversion of particular chattels, the infringing copies, and the measure of damages was the value of the infringing copies which by statute were deemed to be the plaintiffs' property from the mere fact of their being brought into existence. The plaintiffs had contended that so far as this was an action for damages for conversion, it was not an action in respect of infringement of copyright within s. 10, and relied on s. 35 (1), but the words of s. 10 were wide enough to cover the claim for conversion, and the fact that there

might be some other state of circumstances in which a claim for damages for conversion might arise, without there having been any infringement of copyright, was not sufficient ground for holding that s. 10 did not apply to this claim which was, therefore, limited to copies produced within three years before the issue of the writ. The measure of damages for conversion was the value of the infringing copies at the date of conversion—the date of the first act of conversion after they came into existence. Merely allowing the printer to remain in possession of them was not such an act, since it was not necessarily adverse to the plaintiffs, but the order to the binders to bind the sheets containing the infringing matter into bound copies of the third volume of "The Modern Practical Plumber" was a conversion, because it necessarily implied an intention to assert a right inconsistent with the plaintiffs'. *Ash v. Dickie* [1936] 1 Ch. 655, was distinguishable. To value the unbound printed sheets, one must find what they fetched when bound and deduct the cost of binding. As to the damages for infringement, the plaintiffs had suffered in reputation from the fact that the book published by them contained passages practically identical with passages in the larger and more comprehensive work of the defendants, the natural conclusion being that the larger and more expensive book was the original. His lordship awarded £150 damages for conversion and £50 for infringement.

COUNSEL: *K. Shelley; The Hon. Stephen Collins, K.C., and Macgillivray.*

SOLICITORS: *White & Leonard & Nicholls & Co.; Oswald Hickson, Collier & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Newport Borough Council v. Leicester County Council.

Lord Hewart, C.J., Swift and Macnaghten, JJ.
7th December, 1936.

POOR LAW—POOR PERSON SETTLED IN COUNTY—ACT PASSED EXTENDING BOUNDARY OF COUNTY BOROUGH TO INCLUDE POOR PERSON'S RESIDENCE—PERSONS RESIDENT IN ADDED AREA IMMEDIATELY BEFORE 1ST APRIL DEEMED SETTLED IN COUNTY BOROUGH—POOR PERSON'S RESIDENCE CHANGED PREVIOUS FEBRUARY—WHETHER SETTLED IN COUNTY OR BOROUGH—NEWPORT EXTENSION ACT, 1934 (24 & 25 Geo. 5, c. lvii), s. 26.

Appeal, by case stated, from a decision of Leicester justices.

In August, 1935, on complaint by the respondent county council, the justices held that the last place of legal settlement of a certain poor person was in the county borough of Monmouth, the council of which borough were the present appellants. The poor person was unmarried and twenty-seven years of age. Before the 23rd February, 1935, he lived with his father at 20 Graig Park Avenue, Malpas, Monmouthshire, for a period and in circumstances which caused him to acquire a settlement in the county of Monmouth. On the 23rd February, 1935, the poor person left Malpas and went to Loughborough, in Leicestershire. He lived there until the 23rd July, 1935, at which date he became chargeable to the respondent council. By ss. 2, 3 and 4 of the Newport Extension Act, 1934, the boundary of Newport was extended to include *inter alia* that part of Malpas in which 20 Graig Park Avenue was situated. By s. 26 of that Act "(1) Every person resident in the added areas immediately before..." [1st April, 1935] "who has acquired... (a) a settlement in the county... shall be deemed to have acquired... a settlement in... the borough." It was contended by the county of Monmouth that the poor person had by virtue of that provision acquired a settlement in the borough of Newport. The justices having upheld that contention, the Newport Borough Council appealed.

LORD HEWART, C.J., said that by common consent the starting point of the discussion was the fact that, on the

23rd February, 1935, the poor person had acquired a settlement in the county of Monmouth, where the settlement would remain unless something quite definite occurred to disturb it) see the judgment of Lord Loreburn in *West Ham Union v. Edmonton Union* [1908] A.C. 1, at p. 6). Section 26 of the Act of 1934 provided that "Every person resident in the added areas immediately before" the 1st April, 1935, was to be deemed to have acquired a settlement in the borough of the appellants. It had been argued at one stage that the poor person came within that class. Clearly, however, he did not, because he was not resident in Malpas "immediately before" the 1st April, 1935, and those words did not cover the 23rd February. There was no statute or reported decision from which the contention of the county of Monmouth derived the slightest assistance. The settlement accordingly remained undisturbed in Monmouth, and the appeal must be allowed. It was to be regretted that the county of Monmouth had not been represented by counsel.

SWIFT and MACNAGHTEN, JJ., agreed.

COUNSEL: *Montgomery, K.C., and Vernon Gattie*, for the appellants; *Croom-Johnson, K.C., and McQuown*, for the respondents.

SOLICITORS: *Smith, Rundell, Dods & Bockett*, agents for *O. T. Morgan*, Newport, Mon.; *Kingsford, Dorman & Co.*, agents for *Lucas E. Rumsey*, Leicester.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Fosbroke-Hobbes v. Airwork Ltd. and Another.

Goddard, J. 21st December, 1936.

CARRIER—AEROPLANE—*Res Ipsa Loquitur*—APPLICABILITY OF DOCTRINE—GUEST OF HIRER KILLED IN ACCIDENT CAUSED BY PILOT'S NEGLIGENCE—CONTRACT OF HIRE NOT MADE WITH OWNERS OF AEROPLANE—NO MENTION IN CONTRACT OF FURTHER CONDITIONS—ISSUE AT BEGINNING OF JOURNEY BY ACTUAL CARRIERS OF "TICKET" CONTAINING CONDITION EXEMPTING CARRIERS FROM LIABILITY—EFFECT.

Action for damages by a widow on behalf of herself and her three infant daughters in respect of the death of her husband.

One, Vickers, made a contract, contained in letters dated the 5th and 11th July, 1935, with the first defendants, the owners of Heston Aerodrome. Vickers informed the first defendants that he wanted an aeroplane capable of holding seven persons to go to the naval review at Spithead. He knew nothing of the first defendants' position with regard to the hiring, except that they owned the aerodrome. In their letter of the 11th July, the first defendants held themselves out as principals, and they were the only persons with whom Vickers contracted. The second defendants were the owners of the aeroplane in which the flight was to have taken place. The hiring was fixed between the first and second defendants by the 13th July, but no form of charter was submitted, nor was any communication made by either of the defendant companies until the 16th July, the date of the flight. Then, as the passengers, which included the deceased as a guest, were getting into the aeroplane, the pilot handed Vickers an envelope, saying: "Here is your ticket." The so-called ticket was a document called a "special charter," and contained a description of the aeroplane and details of the flight and price, and a variety of terms and conditions. The document contemplated signature by the "passenger," and a return of it when signed to one of the company's officials. Before Vickers had any opportunity of seeing the contents of the envelope the aeroplane started and crashed outside the aerodrome, the plaintiff's husband being killed. One of the conditions in the charter exempted the second defendants from liability for their own or their servants' negligence. *Cur. adv. vult.*

GODDARD, J., said that it was abundantly clear that the accident was due to the fault of the pilot. In his opinion

the doctrine *res ipsa loquitur* applied. It was unnecessary to decide whether that doctrine would apply to every accident occurring to an aeroplane in the course of a prolonged flight, but in the present case there had been a disaster at the very beginning, just as the machine had taken off, and well before it had attained the height at which the journey would be performed. It was an accident which all were agreed ought not to have happened. It was argued that this doctrine should not be applied to an aeroplane, a comparatively new means of locomotion, and one necessarily exposed to the many risks which must be encountered in flying through the air. He could not, however, see that that was any reason for excluding it. As to the first defendants, as the deceased was only a guest, and no party to the contract, the question whether the first defendants were principals or only agents was really immaterial. As, however, the question had been much debated during the trial, he (his lordship) thought it right to state his finding that they had held themselves out as principals. Their contract, however, was only with Vickers. No duty to the deceased, therefore, arose *ex contractu*. The duty to him arose because he was carried in the aeroplane, and that duty must be owed by those who in fact carried him, namely, the second defendants, the actual carriers. It was argued for the plaintiff that this case was brought within the doctrine of such well-known cases as *Holliday v. National Telephone Company* [1899] 2 Q.B. 392; *Penny v. Wimbledon Urban Council* [1899] 2 Q.B. 72; and, more recently, *Honeywill and Stein v. Larkin Bros.* [1934] 1 K.B. 191, and he (his lordship) was invited to hold that the first defendants had, so to speak, set in motion a dangerous operation, and that they were accordingly liable to all the world for any damage which might result. He could not hold that arranging for a journey by aeroplane was setting in motion a thing dangerous in itself. In his opinion, the reasoning underlying those cases had no application to the present. As to the second defendants, they were liable unless they could escape by virtue of the condition exempting them on which they relied. If Vickers was affected by that condition, the deceased, as guest, could be in no better position than his host. The contract in the letters of the 5th and 11th July, whether made with the first defendants as principals or agents, was entirely silent on the matter of conditions, nor did it seem to contemplate the execution of any further document, or that any further document was to be incorporated in the contract. Reference had indeed been made to the charter of an aeroplane, and to a charter flight, but no ordinary person reading those letters would contemplate that something in the nature of a charter-party was to be tendered at a later stage, containing further conditions of the contract. It would have been simple for the first defendants to state that all hirings were to be subject to conditions which would appear on a ticket or other document. On the facts it seemed impossible to hold that there had been a communication of the conditions to the hirer before the journey began, and an acceptance of them, express or implied, by him. It was unnecessary to review the long line of authorities on ticket cases, but it was interesting to refer to the judgment of Swift, J., in *Nunan v. Southern Railway Company* [1923] 2 K.B. 703, which was cited with approval by the Court of Appeal in *Thompson v. London Midland and Scottish Railway Company* [1930] 1 K.B. 41. He assessed the damages at £10,000, and there must be judgment for the plaintiff against the second defendants for that amount, and judgment for the first defendants.

COUNSEL: *Roland Oliver, K.C., Harold Murphy, K.C., and J. C. Leonard*, for the plaintiff; *Sir Stafford Cripps, K.C., and F. W. Beney*, for the first defendants; *Maxwell Fyfe, K.C., and H. G. Robertson*, for the second defendants.

SOLICITORS: *Hyman Isaacs, Lewis and Mills; Linklaters and Paines; Glover, Scott and Apthorpe Webb.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Conneely v. Upton Colliery Co. Ltd.

Lord Hewart, C.J., Swift and Goddard, JJ.
14th January, 1936.

MASTER AND SERVANT—WORK SHARING AGREEMENT BETWEEN EMPLOYERS AND MEN—MEN FOR SPECIAL WORK BROUGHT FROM ANOTHER DISTRICT—ALLEGATION THAT AGREEMENT THEREBY BROKEN—STRIKE—WHETHER BREACH OF CONTRACT OF SERVICE—EMPLOYERS AND WORKMEN ACT, 1875 (38 & 39 Vict. c. 90).

Appeal, by case stated, from a decision of Pontefract justices.

At a court of summary jurisdiction at Pontefract, a complaint was preferred under the Employers and Workmen Act, 1875, by the respondent company against the appellant, claiming £1 10s. for damages and 4s. for court costs for breach of contract for that he wrongfully absented himself from or neglected the service of the respondents at their Upton Colliery from the 11th to the 18th March, 1936. At the hearing, the following facts were proved or admitted: The appellant was engaged by the respondents under a contract of service determinable by seven days' notice. In October, 1933, a work-sharing agreement was entered into by the respondents and representatives of their workmen. The main provision of that agreement was that men dismissed owing to lack of work were to be gradually re-absorbed to the number of 120 out of the 500 dismissed, preference being given to men from the villages of Upton and North Elmsall. In March, 1936, the respondents required certain specialised work to be done, and having no suitable men among those then employed at the colliery and having made enquiries if men in Upton Village were available, they appointed five men with special experience of the work required. Those five men had never at any time been employed by the respondents. Thereupon the workmen of the respondents, including the appellant, without serving notice, ceased work and remained unemployed for a considerable period. For the appellant it was contended that the work-sharing agreement of 1933 was still binding and that, on its true construction, the respondents had committed a breach of the agreement by appointing men from outside the area, as there were men who had been working for the respondents and dismissed in 1932 who had not yet been re-employed, and who were available and qualified to carry out the work. It was contended for the respondents that the abstention from work without notice was in breach of the appellant's contract of service, and was not authorised by the rules of the Miners Association; that the 1933 agreement was void in that the whole of the 120 men for whom it was entered into had been reinstated and employed, and that abnormal and special circumstances in March, 1936, required the appointment of specially capable and skilled workmen. The justices, being of opinion that the appellant had committed a breach of his contract, that the claim was reasonable, and that the agreement of 1933 was no longer binding, in that the number of men to be employed had been reinstated, awarded the company £1 10s. damages and 15s. costs.

LORD HEWART, C.J., said that it was argued that what the respondents had done amounted to a repudiation of the work-sharing agreement. The justices were of opinion that the agreement of 1933, in the events which had happened, was no longer of any force or effect. He (his lordship) was by no means prepared to hold that that view was correct. It was not clear that the agreement was limited to 120 men or to the villages of Upton and North Elmsall. It was not to apply to more than 120 men in the first instance, but it did seem to contemplate that later that number might be exceeded. Even if it were assumed, however, that the work-sharing agreement of October, 1933, was still in force, and that it was not limited to 120 men, he could not understand the proposition that the respondents, by doing what

they did, evinced an intention not to be bound by it. He clearly thought that the employers did not repudiate the agreement, and that the workmen were not entitled to cease work. The appeal ought to be dismissed.

SWIFT and GODDARD, JJ., agreed.

COUNSEL: *Pritt*, K.C. and *Lightman*, for the appellant; *Samuels*, K.C., and *Granville Sharp*, for the respondents.

SOLICITORS: *Ward, Bowie & Co.*, agents for *J. S. and P. Walsh*, Leeds; *Hosking & Berkeley*, agents for *Gichard and Co.*, Rotherham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

Progress of Bills.

House of Commons.

Empire Settlement Bill.	
Read First Time.	[20th January.
Harbours, Piers and Ferries (Scotland) Bill.	
Read First Time.	[20th January.
Kingston-upon-Hull Provisional Order Bill.	
Read First Time.	[20th January.

Questions to Ministers.

LAND REGISTRY.

MR. LIDDALL asked the Attorney-General whether, in view of the growing appreciation of the usefulness of His Majesty's Land Registry, he will at an early date include an additional area for compulsory registration of title.

THE ATTORNEY-GENERAL (Sir Donald Somervell): As my hon. Friend is no doubt aware, the Order extending compulsory registration on sale to the County of Middlesex came into force on 1st January in this year. My Noble and learned Friend the Lord Chancellor has under his constant consideration the question whether further Orders extending compulsory registration of land should be made, and, if so, to what areas they should apply. As pointed out in the report of the Land Transfer Committee, presided over by Lord Tomlin, it is essential, before any extension, that a survey of the area affected should first be brought up to date, and the Lord Chancellor is in consultation with the Ordnance Survey on the matter. [20th January.

Societies.

Annual General Meeting of the Bar.

The annual general meeting of the Bar took place at the Inner Temple Hall on the 18th January. The Attorney-General, Sir Donald Somervell, K.C., said that on this, the first time he had taken the chair at a meeting of the Bar, he thought it would be fitting to refer to his predecessor, Sir Thomas Inskip, K.C., who had been a law officer for some ten years. Researches in the law officers' department showed that this period was a record since the Middle Ages: it had only been exceeded by John Vampage, Attorney-General to Henry VI, and James Hubbard, Attorney-General to Henry VII. The Bar had been fortunate enough to have Sir Thomas at its head for five years, and those who knew him personally held him in great affection as well as high honour.

Among the heavier losses which the Bar had suffered by death had been those of Lord Darling, Lord Trevethin and Viscount Hanworth, who had all possessed different qualities, but had all been beloved and honoured by their profession. Sir Percival Clarke had been a member of the Council for thirty-two years. Mr. Tindale Davis had been serving on the Council at the time of his death only a few weeks ago, and Sir Donald had only a few moments ago heard of the death of Sir Frederick Pollock, for so many years the greatest figure in English law from the point of view of the outside world. Sir Frederick's codes and other great works were a monument of which the Bar might well be proud.

The Bar Council deserved much gratitude for the work which they did for the profession as a whole. Whenever he heard it criticised he felt inclined to challenge the critic to get himself elected on to the Council, where he would find a

warm welcome. The Council was what the Bar made it; he had been an active member of it for several years before he had become an honorary member, and he desired to pay tribute to the hard work its members did and the many problems for which they found a businesslike and satisfactory solution.

FEES FOR INTERLOCUTORY WORK.

It had long been felt, especially by junior counsel, that the remuneration given for the preliminary advice and paper work was inadequate. The Council had suggested to the Lord Chancellor—without criticising in any way the practice of the taxing masters—that there had grown up a practice of allowing only a more or less automatic fee for interlocutory work and not having regard to its difficulty in particular cases and to the amount of time which it required. The Lord Chancellor had written to the Senior Taxing Master asking whether he thought he had sufficient discretion under the existing rules, and the Master had replied saying that he thought he had. The executive committee had therefore decided not to press the matter any further at present. Developments would be carefully watched, but junior counsel had cause to be grateful to the Council and to the Lord Chancellor for the steps they had taken.

The Middlesex Sessions had always been open sessions, and in 1903 the Council had passed a resolution declaring that the Bar Mess had no power to make rules declaring that they were close sessions. A memorial had recently been drawn up and submitted to the Council, "touching the status of the Middlesex Sessions Bar Mess as close sessions." Sir Donald said that he had read the memorial and discussed it with members of the Sessions, but, as the Council had the matter in hand, had not thought it necessary to intervene. The memorial had been very carefully considered; the Council appreciated the point of view of the memorialists, but adhered to their earlier decision and hoped that it would be accepted and loyally carried into practice.

The Council, in a notice concerning Poor Persons Procedure, had expressed the hope that members of the Bar willing to undertake poor persons work, and particularly those who had been recently called to the Bar, would send their names to the Poor Persons Department, and also mention the particular places outside London at which they would be prepared to appear. The Attorney-General appealed to heads of chambers to bring to the notice of young barristers the opportunity which this work offered for personal service and for training in advocacy. Some newcomers might not know of its existence, or might be too shy to apply without encouragement. King's Counsel did not put their names on a list, because they were all notionally on the list already, and in any case in which a certificate for two counsel had been granted, the solicitor might apply to any King's Counsel to appear. Many silks in fact did poor persons work. The Council had considered a scheme for assisting litigants of moderate means out of a central fund but had rejected it as impracticable, remarking that there was no difficulty in getting perfectly competent counsel to undertake work for reduced fees in proper cases. This was undoubtedly true, and all members of the Bar would be ready to allow the client's lack of means to weigh with them.

The privileges which the Bar enjoyed brought with them the duty of maintaining a high professional standard of integrity, competence and expedition. Whether that standard was maintained depended on how far every individual upheld it. The Council, to be efficient and effective, required the co-operation of all the members of the Bar in doing what they could, individually and collectively, to see that these traditions were maintained.

Sir HERBERT CUNLIFFE, K.C., Chairman of the Council, then moved the adoption of the annual statement for 1936. He heartily welcomed the Attorney-General on the first occasion of his taking the chair, and suggested that many members of the Council would consider that the present law officers were none the worse and were probably much the better law officers for having served on the Council for several years. He paid a special tribute to the late Mr. Tindale Davis, whose essential kindness and conscientiousness on the Council had exemplified the best traditions of the Bar. The Council's experience was that many of the complaints which were from time to time preferred against barristers were trivial and that the overwhelming majority of the profession endeavoured to maintain the highest possible standards. Most mistakes were due to ignorance and not to impropriety. The Lord Chancellor had dealt with the matter of junior counsels' fees from a sick bed, and every member rejoiced to hear that he was well enough to return to work. Some members of the Bench, it might be, had forgotten that they were ever at the Bar, but Lord Hailsham had not, and he had always been most kindly and helpful whenever the Council had asked him for assistance.

The motion was seconded by Mr. W. Hanbury Aggs. Mr. CECIL BINNEY found fault with the Council for asking that poor persons' work should be brought to the notice particularly of newly-called barristers. He maintained that poor litigants should have as competent advocates as those who could pay.

The ATTORNEY-GENERAL replied that there was no evidence that poor persons suffered from incompetent advocacy, and in 90 per cent. of cases the poor litigant was successful. Moreover, many senior counsel habitually took poor persons' cases. There was a real possibility that newly-called barristers would not hear of the work unless a special effort were made to inform them.

The statement was adopted unanimously.

After votes of thanks had been passed to the auditors and scrutineers, Mr. R. E. L. VAUGHAN WILLIAMS, K.C., Vice-Chairman, proposed a vote of thanks to the Attorney-General for presiding. H.M. Attorney-General, he said, was one of the busiest people in the world, for he had to deal not only with ordinary litigation but also with great affairs of state and his parliamentary duties. The close attention which Sir Donald had given to the business of the meeting was another proof of how good a friend he was to the Bar.

Seconded by Mr. NOEL GOLDIE, K.C., M.P., the motion was carried with acclamation, and the Attorney-General briefly replied.

Members of the Council also present were Mr. Wilfrid Clothier, K.C., Mr. L. L. Cohen, K.C., Mr. Charles Doughty, K.C., Mr. J. P. Eddy, K.C., Mr. D. P. Maxwell Fyfe, K.C., M.P., Mr. A. T. Miller, K.C., Mr. J. W. Morris, K.C., Mr. W. P. Spens, K.C., M.P., Mr. W. C. Cleveland Stevens, K.C., Mr. Linton Thorp, K.C., M.P., Mr. J. H. Boraston, C.B., Mr. E. H. Butcher, Mr. T. M. O'Callaghan, Mr. J. Reginald Jones, Mr. George F. Kingham, Mr. J. H. Stamp, Mr. Cecil Turner, and Mr. Andrewes Uthwatt.

Middle Temple.

GRAND DAY.

Tuesday, 19th January, being the Grand Day of Hilary Term at the Middle Temple, the Master Treasurer (Mr. Heber Hart, K.C.), and the Masters of the Bench entertained at dinner the following guests:—

Mr. J. Ramsay MacDonald, M.P. (Lord President of the Council), The Marquess of Willington, Viscount Dawson of Penn (President of the Royal College of Physicians), The Bishop of St. Edmundsbury and Ipswich, Lord Snell, Lord Davies, Mr. Montagu Norman, Admiral of the Fleet Sir Roger Keyes, M.P., Major Sir George Hennessey, General Sir Hubert Gough, Sir Gerald Wollaston (Garter King of Arms), The Dean of St. Paul's, Sir Miles Mattison, K.C., Sir Frederick Gowland Hopkins, O.M. (President of the Royal Society), Sir James Jeans, Mr. Alexander Wilson, Lieut.-Col. W. M. Newton, and the Reader at the Temple Church (The Rev. J. F. Clayton).

The Benchers present, in addition to the Treasurer, were Judge Ruegg, K.C., Lord Craigmyle, Viscount Dunedin, Mr. L. De Gruyther, K.C., Sir Cecil Hurst, K.C., Lord Salvesen, Mr. Justice Hawke, The Hon. S. O. Henn Collins, K.C., Mr. A. M. Dunne, K.C., Mr. J. M. Gover, K.C., Mr. Bruce Williamson, Mr. A. M. Sullivan, K.C., Mr. W. E. Vernon, Mr. J. Scholefield, K.C., Mr. W. Craig Henderson, K.C., Mr. J. D. Cassels, K.C., Sir Edward Tindal Atkinson, Lord Strathcarron, K.C., Mr. J. Bowen Davies, K.C., Col. Sir Henry F. MacGeagh, K.C., Mr. Justice du Parcq, Mr. Raymond Needham, K.C., Mr. Henry Johnson, Mr. Bruce Thomas, K.C., The Marquess of Reading, K.C., Mr. Wilfrid Price, Mr. H. C. Gutteridge, K.C., and the Under-Treasurer (Mr. T. F. Hewlett).

Inner Temple.

GRAND DAY.

Wednesday, 20th January, being the Grand Day of Hilary Term at the Inner Temple, the Treasurer (Mr. A. W. Bairstow, K.C.) and the Masters of the Bench entertained at dinner the following guests:—

The French Ambassador, Lord Russell of Killowen, Lord Snell, Lord Rushcliffe, The High Commissioner for Canada, Mr. Justice Swift, Field-Marshal Sir Philip Chetwode, Admiral of the Fleet Sir Roger Keyes, Sir Edward Bairstow, Judge Rowlands, The Treasurer of the Middle Temple, Mr. Walter Hedley, K.C., Professor Winfield, Mr. J. H. Batty, Mr. J. A. K. Ferns, The Reader and the Sub-Treasurer.

The following Masters of the Bench were also present: Sir Francis Taylor, K.C., Lord Hewart (Lord Chief Justice), Lord Justice Scott, Mr. T. Hollis Walker, K.C., Lord Macmillan, Sir Ernest Wingate-Saul, K.C., Mr. C. M. Pitman, K.C., Sir Boyd Merriman (President of the Probate, Divorce and

Admiralty Division), Mr. Justice Bucknill, The Hon. Sir Reginald Coventry, K.C., Mr. F. G. Thomas, K.C., Mr. Justice Singleton, Mr. Justice Goddard, Mr. Justice Lewis, Mr. M. J. L. Beebee, Mr. H. G. Robertson, Mr. S. R. C. Bosanquet, K.C., Mr. Justice Langton, Mr. C. Paley Scott, K.C., Sir George Bonner, Mr. R. A. Gordon, K.C., Mr. Charles Doughty, K.C., Mr. J. W. Jardine, K.C., Mr. R. P. Hills, Mr. Valentine Holmes, Mr. N. B. Goldie, K.C., Mr. A. W. Cockburn, and Sir Terence O'Connor, K.C. (Solicitor-General).

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 13th January, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Mr. J. C. Irwin proposed the motion: "That this House looks forward to the day when Britain will be a Republic." Mr. Norman V. Craig opposed, and Mr. Dobson, Mr. Walter Stewart, Mr. Ingram, Mr. Eric Moses, Mr. Hunter, Mr. Sandilands and Major Buller also spoke. Mr. Irwin replied. Upon a division the motion was carried by one vote.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 12th January (chairman, Mr. E. V. E. White), the subject for debate was "That the case of *Wray v. Essex County Council*, 152 L.T. 324, was wrongly decided." Mr. R. H. le Mesurier opened in the affirmative. Mr. G. M. Parbury opened in the negative. Mr. L. Stone seconded in the affirmative. Mr. M. C. Green seconded in the negative. The following members also spoke: Messrs. R. Landman, J. K. Thorpe, G. A. Russo, D. J. Smalley, F. G. Timmins, P. W. Iliif, H. F. MacMaster, W. M. Pleadwell, Q. B. Hurst and J. R. Campbell-Carter. The opener having replied, and the Chairman having summed up, the motion was lost by eight votes. There were nineteen members present.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held on the 6th January, at 60, Carey Street, London, W.C.2, with Mr. R. C. Nesbitt in the chair. The following directors were present:—Mr. P. D. Botterell, C.B.E., Mr. A. J. Cash (Derby), Sir Edmund Cook, C.B.E., Mr. G. Daw (Exeter), Mr. T. S. Curtis, Mr. E. F. Dent, Mr. A. N. Hickley, Mr. G. Keith, Sir E. F. Knapp-Fisher, Mr. C. G. May, Mr. R. Pemberton, Mr. W. N. Riley (Brighton), Mr. E. Sant (Salisbury), Mr. F. L. Steward (Wolverhampton), Vice-Chairman Mr. H. White (Winchester), and the Secretary. £1,369 was distributed in grants to necessitous cases, forty-three new members admitted, and other general business transacted.

The Hardwicke Society.

A meeting of the Society was held on Friday, 15th January, at 8.15 p.m., in the Middle Temple Common Room, the Hon. Treasurer, Mr. G. E. Llewellyn Thomas, in the chair. Mr. Colin Pearson moved: "That the Government is trifling with the distressed areas." Mr. Leonard Caplan opposed. There also spoke Mr. Walter Stewart, Mr. Sexton, Mr. Bucher, Mr. Ungood Thomas (ex-President), Mr. Newman Hall (ex-President), Mr. Lewis Sturge (Hon. Secretary), Mr. Grieves and Mr. McNabb. The hon. mover having replied, the house divided, and the motion was carried by four votes.

The Dublin Law Students' Debating Society.

A meeting of the Society was held in the King's Inns on Thursday, 14th January, with Good, B.L., in the chair. The meeting was the opening meeting of the Hilary Term and was in the nature of a general debate, namely, "That the freedom of the press is no guarantee of individual liberty." Mr. Gollock moved the affirmative, being supported by Messrs. Jennings, D. R. Uadnaigh, Connor, Bradfield-England and Stephens. While Mr. Peart led from the negative point of view, being followed by Messrs. Kirkpatrick, McDewitt (Auditor), Desmond, McDermott and Heavey. The chairman, after hearing lengthy arguments from both sides, put the motion to the house, which was defeated.

The net amount of new life business completed by the Alliance Assurance Company Limited during 1936 was £3,525,540.

Legal Notes and News.

Honours and Appointments.

The Attorney-General has appointed Mr. VICTOR REES ARONSON to be Junior Counsel to the Board of Trade in bankruptcy cases in succession to the late Mr. C. N. Tindale Davis. Mr. Aronson was called to the Bar by the Inner Temple in 1904.

Mr. EDWARD ROBERTS, Deputy Town Clerk and Clerk of the Peace, has been appointed Town Clerk of Merthyr, in succession to Mr. J. Ernest Biddle, who has retired. Mr. Roberts was admitted a solicitor in 1909.

Mr. ROBERT FAULDS POLLOCK, Solicitor and Deputy Town Clerk, Kilmarnock, was appointed full-time Town Clerk of Hawick at a meeting of Hawick Town Council.

Notes.

His Honour Judge Alexander Hyslop Maxwell is retiring on 31st March. Judge Maxwell, who is in his seventy-third year, has been Judge of County Courts on Circuit 55 since 1920. He was a solicitor before being called to the Bar in 1889.

Corrections to the list of counsel to appear in "The Law List" for 1937, now in course of preparation, can only be accepted up to Thursday, 28th January. Communications should be addressed to the publishers at 119 and 120, Chancery Lane, London, W.C.2.

An Ordinary Meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1, on Thursday, 28th January, at 8.30 p.m., when a paper will be read by Mr. H. E. Cox, Ph.D., D.Sc.(Lond.), F.I.C., on "Some Forensic Aspects of Dermatitis." Members may introduce guests to the meeting on production of the member's private card.

At Worksop County Court last Tuesday, His Honour Judge Hildyard, K.C., decided that sixty-four miners on strike at Harworth Colliery must give up possession of their homes within two months. He held that their houses were occupied as a condition of employment, and that they were not controlled. Consequently, the tenants had no protection under the Rent Restrictions Act.

The directors of the Midland Bank Limited report that, full provision having been made for all bad and doubtful debts, the net profits for the year 1936 amount to £2,467,894, which, with £467,447 brought forward, makes £2,935,341. Appropriations amounting to £1,519,129 have been made, leaving a sum of £1,416,212 from which the directors recommend a dividend, payable 1st February next, for the half-year ended 31st December, 1936, at the rate of 16 per cent. per annum, less income tax, and a balance to be carried forward of £547,084.

Court Papers.

Supreme Court of Judicature.

DATE.	EMERGENCY APPEAL COURT		GROUP I.	
	ROTA.	No. I.	MR. JUSTICE	MR. JUSTICE
			EVE.	BENNETT.
			Witness	Witness
			Part I.	Part II.
Jan. 25	Mr. More	Mr. Jones	*Blaker	*More
" 26	Hicks Beach	Ritchie	*More	*Hicks Beach
" 27	Andrews	Blaker	*Hicks Beach	*Andrews
" 28	Jones	More	Andrews	*Jones
" 29	Ritchie	Hicks Beach	Jones	*Ritchie
" 30	Blaker	Andrews	Ritchie	Blaker
	GROUP I.		GROUP II.	
	MR. JUSTICE	MR. JUSTICE	MR. JUSTICE	MR. JUSTICE
	CROSSMAN.	CLAUSON.	LUXMOORE.	FARWELL.
	Non-Witness	Non-Witness	Witness	Witness
			Part II.	Part I.
Jan. 25	Mr. Hicks Beach	Mr. Ritchie	Mr. Jones	Mr. Andrews
" 26	Andrews	Blaker	Ritchie	*Jones
" 27	Jones	More	Blaker	*Ritchie
" 28	Ritchie	Hicks Beach	More	*Blaker
" 29	Blaker	Andrews	Hicks Beach	*More
" 30	More	Jones	Andrews	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 4th February, 1937.

	Div. Months.	Middle Price 20 Jan. 1937.	Flat Interest Yield.	†Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after FA	112½	£ s. d.	£ s. d.	£ s. d.
Consols 2½% JAJO	83½	3 11 3	3 3 3	—
War Loan 3½% 1952 or after JD	105	2 19 11	—	—
Funding 4% Loan 1960-90 MN	115½	3 6 8	3 1 11	—
Funding 3% Loan 1959-69 AO	100½	3 9 5	3 1 4	—
Funding 2½% Loan 1956-61 AO	91½	2 19 10	2 19 8	—
Victory 4% Loan Av. life 23 years .. MS	114	2 14 8	3 0 2	—
Conversion 5% Loan 1944-64 MN	116½	3 10 2	3 2 9	—
Conversion 4½% Loan 1940-44 JJ	107½	4 5 8	2 7 6	—
Conversion 3½% Loan 1961 or after .. AO	106½	4 3 6	2 16 3	—
Conversion 3% Loan 1948-53 MS	102½	3 5 10	3 2 6	—
Conversion 2½% Loan 1944-49 AO	100½	2 18 7	2 15 0	—
Local Loans 3% Stock 1912 or after .. JAJO	95½	2 9 9	2 8 5	—
Bank Stock AO	369½	3 3 0	—	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after JJ	84	3 4 11	—	—
Guaranteed 3% Stock (Irish Land Act) 1939 or after JJ	94½	3 5 6	—	—
India 4½% 1950-55 MN	114½	3 3 6	—	—
India 3½% 1931 or after JAJO	97	3 18 7	3 2 6	—
India 3% 1948 or after JAJO	83	3 12 2	—	—
Sudan 4½% 1939-73 Av. life 27 years .. FA	116	3 12 3	—	—
Sudan 4% 1974 Red. in part after 1950 .. MN	114½	3 17 7	3 11 3	—
Tanganyika 4% Guaranteed 1951-71 .. FA	113	3 9 10	2 14 10	—
L.P.T.B. 4½% "T.F.A." Stock 1942-72 .. JJ	108	3 10 10	2 17 4	—
Lon. Elec. T. F. Corpn. 2½% 1950-55 .. FA	91	4 3 4	2 15 4	—
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70 .. JJ	109	2 14 11	3 2 8	—
Australia (C'mm'nw'th) 3% 1955-58 .. AO	96	3 13 5	3 6 7	—
Canada 4% 1953-58 MS	113	3 2 6	3 5 2	—
*Natal 3% 1929-49 JJ	101	3 10 10	3 0 2	—
*New South Wales 3½% 1930-50 JJ	100	2 19 5	—	—
*New Zealand 3% 1945 AO	100	3 10 0	3 10 0	—
†Nigeria 4% 1963 AO	115	3 0 0	3 0 0	—
*Queensland 3½% 1950-70 JJ	100	3 9 7	3 3 4	—
South Africa 3½% 1953-73 JD	106	3 10 0	3 10 0	—
*Victoria 3½% 1929-49 AO	101	3 6 0	3 0 5	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after JJ	97	3 1 10	—	—
*Croydon 3% 1940-60 AO	101	2 19 5	2 12 0	—
Essex County 3½% 1952-72 JD	106	3 6 0	3 0 5	—
Leeds 3% 1927 or after JJ	96	3 2 6	—	—
Liverpool 3½% Redeemable by agreement with holders or by purchase .. JAJO	105½	3 6 4	—	—
London County 2½% Consolidated Stock after 1920 at option of Corp. MJSD	81½	3 1 4	—	—
London County 3% Consolidated Stock after 1920 at option of Corp. MJSD	94	3 3 10	—	—
Manchester 3% 1941 or after FA	97	3 1 10	—	—
*Metropolitan Consd. 2½% 1920-49 .. MJSD	100	2 10 0	—	—
Metropolitan Water Board 3% "A" 1963-2003 AO	98	3 1 3	3 1 5	—
Do. do. 3% "B" 1934-2003 MS	98	3 1 3	3 1 5	—
Do. do. 3% "E" 1953-73 JJ	99	3 0 7	3 0 11	—
Middlesex County Council 4% 1952-72 .. MN	113½	3 10 6	2 18 7	—
† Do. do. 4½% 1950-70 MN	115½	3 17 11	3 2 4	—
Nottingham 3% Irredeemable MN	96	3 2 6	—	—
Sheffield Corp. 3½% 1968 JJ	106½	3 5 9	3 3 4	—
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture JJ	111	3 12 1	—	—
Gt. Western Rly. 4½% Debenture JJ	124½	3 12 3	—	—
Gt. Western Rly. 5% Debenture JJ	134½	3 14 4	—	—
Gt. Western Rly. 5% Rent Charge FA	132	3 15 9	—	—
Gt. Western Rly. 5% Cons. Guaranteed .. MA	132	3 15 9	—	—
Gt. Western Rly. 5% Preference MA	126	3 19 4	—	—
Southern Rly. 4% Debenture JJ	110	3 12 9	—	—
Southern Rly. 4% Red. Deb. 1962-67 .. JJ	112½	3 11 1	3 5 3	—
Southern Rly. 5% Guaranteed MA	132	3 15 9	—	—
Southern Rly. 5% Preference MA	124½	4 0 4	—	—

*Not available to Trustees over par.

†Not available to Trustees over 115.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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